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enforcement agency evidence of his or her identity and an address within this state at which he or she can be located and satisfactory evidence that all parking penalties due for the vehicle and all traffic violations of the registered owner have been cleared, or both. A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of requiring satisfactory evidence that the parking penalties and failures to appear have been satisfied, the impounding law enforcement agency may, in its discretion, issue a notice to appear for the offenses charged, as provided in Article 2 (commencing with Section 40500) of Chapter 2 of Division 17. In lieu of either furnishing satisfactory evidence that the bail has been deposited or accepting the notice to appear, that person may demand to be taken without unnecessary delay before a magistrate within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded or a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(2) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle.

(j) When any vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When any vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(*l*) When any vehicle is illegally parked on a highway in violation

of any local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(m) Wherever the use of the highway, or any portion thereof, is authorized by local authorities for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of any vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(n) Whenever any vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. No vehicle may be removed unless signs are posted giving notice of the removal.

(o) (1) When any vehicle is found upon a highway, any public lands, or an offstreet parking facility with a registration expiration date in excess of one year before the date it is found on the highway, public lands, or the offstreet parking facility. However, if the vehicle is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle. For purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(2) As used in this subdivision, "offstreet parking facility" means any offstreet facility held open for use by the public for parking vehicles and includes any publicly owned facilities for offstreet parking, and privately owned facilities for offstreet parking where no fee is charged for the privilege to park and which are held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, or 14601.5 and there is no passenger in the vehicle who has a valid driver's license and authorization to operate the vehicle. Any vehicle so removed from the highway or any public lands shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever any vehicle is parked for more than 24 hours on a portion of highway which is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing

notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When any vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When any vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle which is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or view point.

(2) For purposes of this subdivision, a roadside rest area or view point is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

SEC. 43. Section 22658 of the Vehicle Code is amended to read:

22658. (a) Except as provided in Section 22658.2, the owner or person in lawful possession of any private property, subsequent to notifying, by telephone or, if impractical, by the most expeditious means available, the city police or county sheriff, whichever is appropriate, may cause the removal of a vehicle parked on the property to the nearest public garage under any of the following circumstances:

(1) There is displayed, in plain view at all entrances to the property, a sign not less than 17 by 22 inches in size, with lettering not less than one inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner's expense, and containing the telephone number of the local traffic law enforcement agency. The sign may also indicate that a citation may also be issued for the violation.

(2) The vehicle has been issued a notice of parking violation, and 96 hours have elapsed since the issuance of that notice.

(3) The vehicle is on private property and lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment necessary to operate safely on the highways, the owner or person in lawful possession of the private property has notified the city police or county sheriff, as appropriate, and 24 hours have elapsed since that notification.

(4) The lot or parcel upon which the vehicle is parked is improved with a single-family dwelling.

(b) The person causing removal of the vehicle, if the person knows or is able to ascertain from the registration records of the Department of Motor Vehicles the name and address of the registered and legal owner of the vehicle, shall immediately give, or cause to be given, notice in writing to the registered and legal owner of the fact of the removal, the grounds for the removal, and indicate the place to which the vehicle has been removed. If the vehicle is

stored in a public garage, a copy of the notice shall be given to the proprietor of the garage. The notice provided for in this section shall include the amount of mileage on the vehicle at the time of removal. If the person does not know and is not able to ascertain the name of the owner or for any other reason is unable to give the notice to the owner as provided in this section, the person causing removal of the vehicle shall comply with the requirements of subdivision (c) of Section 22853 relating to notice in the same manner as applicable to an officer removing a vehicle from private property.

(c) This section does not limit or affect any right or remedy which the owner or person in lawful possession of private property may have by virtue of other provisions of law authorizing the removal of a vehicle parked upon private property.

(d) The owner of a vehicle removed from private property pursuant to subdivision (a) may recover for any damage to the vehicle resulting from any intentional or negligent act of any person causing the removal of, or removing, the vehicle.

(e) Any owner or person in lawful possession of any private property, or an "association" pursuant to Section 22658.2, causing the removal of a vehicle parked on that property is liable for double the storage or towing charges whenever there has been a failure to comply with paragraph (1), (2), or (3) of subdivision (a) or to state the grounds for the removal of the vehicle if requested by the legal or registered owner of the vehicle as required by subdivision (f).

(f) Any owner or person in lawful possession of any private property, or an "association" pursuant to Section 22658.2, causing the removal of a vehicle parked on that property shall state the grounds for the removal of the vehicle if requested by the legal or registered owner of that vehicle. Any towing company that removes a vehicle from private property with the authorization of the property owner or the property owner's agent shall not be held responsible in any situation relating to the validity of the removal. Any towing company that removes the vehicle under this section shall be responsible for (1) any damage to the vehicle in the transit and subsequent storage of the vehicle and (2) the removal of a vehicle other than the vehicle specified by the owner or other person in lawful possession of the private property.

(g) Possession of any vehicle under this section shall be deemed to arise when a vehicle is removed from private property and is in transit.

(h) A towing company may impose a charge of not more than one-half of the regular towing charge for the towing of a vehicle at the request of the owner of private property or that owner's agent pursuant to this section if the owner of the vehicle or the owner's agent returns to the vehicle before it is removed from the private property. The regular towing charge may only be imposed after the vehicle has been removed from the property and is in transit.

(i) A charge for towing or storage, or both, of a vehicle under this section is excessive if the charge is greater than that which would

have been charged for towing or storage, or both, made at the request of a law enforcement agency under an agreement between the law enforcement agency and a towing company in the city or county in which is located the private property from which the vehicle was, or was attempted to be, removed.

If a request to release a vehicle is made within 24 hours from the time the vehicle is brought into the storage facility, regardless of the calendar date, the storage charge shall be for only one day. Not more than one day's storage charge may be required for any vehicle released the same day that it is stored.

(j) Any person who charges a vehicle owner a towing, service, or storage charge at an excessive rate, as described in subdivision (i), is liable to the vehicle owner for four times the amount charged.

(k) Persons operating or in charge of any storage facility where vehicles are stored pursuant to this section shall accept a valid bank credit card or cash for payment of towing and storage by a registered owner or the owner's agent claiming the vehicle. A person operating or in charge of any storage facility who refuses to accept a valid bank credit card is liable to the registered owner of the vehicle for four times the amount of the towing and storage charges, but not to exceed five hundred dollars ($500). In addition, persons operating or in charge of the storage facility shall have sufficient moneys on the premises to accommodate, and make change in, a reasonable monetary transaction.

Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies as described in subdivision (i).

(*l*) (1) A towing company shall not remove or commence the removal of a vehicle from private property without first obtaining written authorization from the property owner or lessee, or an employee or agent thereof, who shall be present at the time of removal. General authorization to remove or commence removal of a vehicle at the towing company's discretion shall not be delegated to a towing company or its affiliates except in the case of a vehicle unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a manner which interferes with any entrance to, or exit from, the private property.

(2) If a towing company removes a vehicle without written authorization and that vehicle is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a manner which interferes with any entrance to, or exit from, the private property, the towing company shall take, prior to the removal of that vehicle, a photograph of the vehicle which clearly indicates that parking violation. The towing company shall keep one copy of the photograph taken pursuant to this paragraph, and shall present that photograph to the owner or an agent of the owner, when that person claims the vehicle.

(3) Any towing company, or any affiliate of a towing company,

which removes, or commences removal of, a vehicle from private property without first obtaining written authorization from the property owner or lessee, or an employee or agent thereof, who is present at the time of removal or commencement of the removal, except as permitted by paragraph (1), is liable to the owner of the vehicle for four times the amount of the towing and storage charges, in addition to any applicable criminal penalty, for a violation of paragraph (1).

SEC. 44. Section 23157 of the Vehicle Code, as amended by Section 4 of Chapter 1242 of the Statutes of 1992, is repealed.

SEC. 44.5. Section 23157 of the Vehicle Code, as added by Section 9.7 of Chapter 1281 of the Statutes of 1992, is amended to read:

23157. (a) (1) Any person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood, breath, or urine for the purpose of determining the alcoholic content of his or her blood, and to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23152 or 23153. The testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23152 or 23153. The person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory imprisonment if the person is convicted of a violation of Section 23152 or 23153, and (A) the suspension of the person's privilege to operate a motor vehicle for a period of one year, (B) the revocation of the person's privilege to operate a motor vehicle for a period of two years if the refusal occurs within seven years of a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23152 or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code which resulted in a conviction, or if the person's privilege to operate a motor vehicle has been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense which occurred on a separate occasion, or (C) the revocation of the person's privilege to operate a motor vehicle for a period of three years if the refusal occurs within seven years of two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23152 or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, which resulted in convictions, or if the person's privilege to operate a motor vehicle has been suspended or revoked two or more times pursuant to Section 13353 or 13353.2 for offenses which occurred on separate occasions, or if there is any combination of those convictions or administrative suspensions or revocations.

(2) (A) If the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood, breath, or urine, and the

officer shall advise the person that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing any chosen test, the person shall submit to the person's choice of the remaining tests or test, and the officer shall advise the person that the person has that choice.

(B) If the person is lawfully arrested for driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the person has the choice of whether the test shall be of his or her blood, breath, or urine, and the officer shall advise the person that he or she has that choice.

(C) A person who chooses to submit to a breath test may also be requested to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. The officer shall state in his or her report the facts upon which that belief and that clear indication are based. The person has the choice of submitting to and completing a blood or urine test, and the officer shall advise the person that he or she is required to submit to an additional test and that he or she may choose a test of either blood or urine. If the person arrested either is incapable, or states that he or she is incapable, of completing either chosen test, the person shall submit to and complete the other remaining test.

(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 23152 or 23153, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person has the choice of those tests which are available at the facility to which that person has been transported. In that case, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

(4) The officer shall also advise the person that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law.

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn his or her consent and a test or tests may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests will result in the suspension or revocation of his or her privilege to operate a motor vehicle. Any person who is dead is deemed not to have withdrawn his or her consent and a test or tests may be administered at the direction of

a peace officer.

(b) Any person who is afflicted with hemophilia is exempt from the blood test required by this section.

(c) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon is exempt from the blood test required by this section.

(d) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle in violation of Section 23152 or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood, breath, or urine for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

(e) If the person, who has been arrested for a violation of Section 23152 or 23153, refuses or fails to complete a chemical test or tests, or requests that a blood or urine test be taken, the peace officer, acting on behalf of the department, shall serve the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle personally on the arrested person. The notice shall be on a form provided by the department.

(f) If the peace officer serves the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle, the peace officer shall take possession of any driver's license issued by this state which is held by the person. The temporary driver's license shall be an endorsement on the notice of the order of suspension and shall be valid for 30 days from the date of arrest.

(g) The peace officer shall immediately forward a copy of the completed notice of suspension or revocation form and any driver's license taken into possession under subdivision (f), with the report required by Section 23158.2, to the department. If the person submitted to a blood or urine test, the peace officer shall forward the results immediately to the appropriate forensic laboratory. The forensic laboratory shall forward the results of the chemical tests to the department within 15 calendar days of the date of the arrest.

(h) A preliminary alcohol screening test that indicates the presence or concentration of alcohol based on a breath sample in order to establish reasonable cause to believe the person was driving a vehicle in violation of Section 23152 or 23153 may be used only after the officer evaluates the totality of the circumstances, including the person's performance on the field sobriety tests and under both of the following conditions:

(1) If a person refuses to take field sobriety tests or is incapable of taking the tests, the preliminary alcohol screening test may be used as a further investigative tool, unless the person refuses to take the preliminary alcohol screening test.

(2) If the officer decides to use a preliminary alcohol screening test, the officer shall advise the person that he or she is requesting that person to take a preliminary alcohol screening test to assist the officer in determining if that person is under the influence of alcohol.

The person's obligation to submit to a blood, breath, or urine test, as required by this section, for the purpose of determining the alcohol or drug content of that person's blood, is not satisfied by the person submitting to a preliminary alcohol screening test. The officer shall advise the person of that fact and of the person's right to refuse to take the preliminary alcohol screening test.

(i) This section shall become operative on July 1, 1993.

SEC. 45. Section 23161 of the Vehicle Code is amended to read:

23161. (a) Except as provided in subdivision (f), if the court grants probation to any person punished under Section 23160, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person be subject to one of the following:

(1) Be confined in the county jail for at least 48 hours but not more than six months, and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The court may order the Department of Motor Vehicles to suspend the privilege to operate a motor vehicle pursuant to paragraph (1) of subdivision (a) of Section 13352 when this condition of probation is imposed.

(2) Pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000) and, if the person gives proof of financial responsibility, as defined in Section 16430, to the Department of Motor Vehicles, have the privilege to operate a motor vehicle restricted for 90 days to necessary travel to and from that person's place of employment and to and from the program described in subdivision (b). If driving a motor vehicle is necessary to perform the duties of the person's employment, the restriction also shall allow the person to drive in that person's scope of employment. Whenever the driving privilege is restricted under this section, proof of financial responsibility shall be maintained for three years.

(b) (1) Each county, through the county alcohol program administrator, shall determine its ability to establish, through public or private resources, a program of alcohol or drug education and counseling services, which is self-supporting through fees collected from program participants. The program shall be of at least three months' duration and totaling at least 30 hours of direct education and counseling services, which shall be authorized by each county and licensed by, and operated under general regulations established by, the State Department of Alcohol and Drug Programs. A county which shows the State Department of Alcohol and Drug Programs that it has insufficient resources, insufficient potential program participants, or other material disadvantages is not required to establish a program.

(2) The State Department of Alcohol and Drug Programs may license an alcohol or drug education program that is less than 30 hours in length in any county where the board of supervisors has provided the showing pursuant to paragraph (1), and the State

Department of Alcohol and Drug Programs has upheld that showing. The shorter program is subject to all other applicable regulations developed by that state department pursuant to paragraph (3) of subdivision (b) of Section 11837.4 of the Health and Safety Code.

(3) Except as provided in paragraph (4), in any county where the board of supervisors has approved, and the State Department of Alcohol and Drug Programs has licensed, a program or programs described in paragraph (1) or (2), the court shall also impose as a condition of probation that the driver shall participate in, and successfully complete, an alcohol or drug education and counseling program, or both of these programs, in the driver's county of residence or employment, as designated by the court.

(4) For persons who are active duty personnel in the United States Navy or Marine Corps, the court, unless the defendant requests otherwise, shall impose as a condition of probation that the driver participate in, and successfully complete, the Navy Alcohol Drug Safety Action Program rather than a program described in paragraph (1) or (2).

(c) Each county which has approved an alcohol or drug education program or programs and which is licensed by the State Department of Alcohol and Drug Programs shall make provision for persons who can document current inability to pay the program fee, in order to enable those persons to participate. The county shall require that the program report the failure of a person referred to the program to enroll in the program to the referring court.

(d) In order to assure effectiveness of the alcohol or drug education and counseling program, the county shall provide, as appropriate, services to ethnic minorities, women, youth, or any other group that has particular needs related to the program.

(e) (1) Any person required to successfully complete an alcohol or drug education and counseling program as a condition of probation shall enroll in the program and, except when enrollment is required in a program that is required to report failures to enroll to the court, shall furnish proof of the enrollment to the court within the period of time and in the manner specified by the court. The person also shall participate in and successfully complete the program, and shall furnish proof of successful completion within the period of time and in the manner specified by the court. The court shall revoke the person's probation pursuant to Section 23207, except for good cause shown, for the failure to comply with this paragraph.

(2) An alcohol or drug education and counseling program shall report to the court within the period of time and in the manner specified by the court the name of any person who fails to successfully complete the program.

(3) The court, in establishing the reporting requirements in this subdivision, shall consult with the county alcohol program administrator. The county alcohol program administrator shall coordinate the reporting requirements with the Department of Motor Vehicles and the State Department of Alcohol and Drug

Programs. That reporting shall ensure that all persons who, after being ordered to attend and complete a program, may be identified for either (1) failure to enroll in, or failure to successfully complete, the program, or (2) successful completion of the program as ordered.

(f) Notwithstanding subdivision (a), if the offense occurred in a vehicle requiring a driver with a class A or class B driver's license or with an endorsement specified in Section 15278, the court shall upon conviction order the department to suspend the driver's privilege pursuant to paragraph (1) of subdivision (a) of Section 13352.

SEC. 46. Section 23166 of the Vehicle Code is amended to read:

23166. If the court grants probation to any person punished under Section 23165, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to either subdivision (a) or (b), as follows:

(a) Be confined in the county jail for at least 10 days but not more than one year, and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (3) of subdivision (a) of Section 13352.

(b) All of the following:

(1) Be confined in the county jail for at least 48 hours but not more than one year.

(2) Pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000).

(3) If the person gives proof of financial responsibility, as defined in Section 16430, to the Department of Motor Vehicles, have the privilege to operate a motor vehicle be restricted by the Department of Motor Vehicles pursuant to Section 13352.5, for the duration of the treatment program prescribed in paragraph (4), to necessary travel to and from that person's place of employment and to and from the applicable treatment program described in paragraph (4). If driving a motor vehicle is necessary to perform the duties of the person's employment, the restriction also shall allow the person to drive in that person's scope of employment.

Except as is specified in subparagraph (B) of paragraph (4), if the person gives proof of financial responsibility to the Department of Motor Vehicles, the Department of Motor Vehicles shall not suspend the person's privilege to operate a motor vehicle under Section 13352, as provided in Section 13352.5, unless the offense occurred in a vehicle requiring a driver with a class A or class B driver's license or with an endorsement prescribed in Section 15278.

(4) Either of the following:

(A) Participate, for at least 18 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. The program shall provide for

persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate.

(B) Participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. A person ordered to treatment pursuant to this subparagraph shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subparagraph is a basis for reducing any other probation requirement or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

SEC. 47. Section 23168 of the Vehicle Code is amended to read:

23168. (a) Any person, except as provided in subdivision (b), who has been granted probation under the conditions of subdivision (b) of Section 23166, after six months have elapsed since the commencement of participation in the treatment program, may petition the court to have the restriction on that person's privilege to operate a motor vehicle removed, and the court, for good cause shown, may order the Department of Motor Vehicles to remove the restrictions upon a showing that the person has successfully participated in the treatment program and complied with the terms and conditions of probation and has given proof of financial responsibility, as defined in Section 16430.

(b) Regardless of the type of vehicle used in committing the offense, this section does not apply to persons holding a class A or class B driver's license or to a person holding a class C license who is required to have an endorsement under any provision of this code.

SEC. 48. Section 23186 of the Vehicle Code is amended to read:

23186. If the court grants probation to any person punished under Section 23185, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to the provisions of either subdivision (a) or (b), as follows:

(a) Be confined in the county jail for at least 120 days and pay a fine of at least three hundred ninety dollars ($390), but not more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (4) of subdivision (a) of Section

13352.

(b) All of the following:

(1) Be confined in the county jail for at least 30 days, but not more than one year.

(2) Pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000).

(3) Pursuant to Section 13352.5, have the privilege to operate a motor vehicle be suspended for one year by the Department of Motor Vehicles and, after that one-year period, if the person gives proof of financial responsibility, as defined in Section 16430 to the Department of Motor Vehicles, have the privilege restricted by the Department of Motor Vehicles for two additional years to necessary travel to and from that person's place of employment, and to and from the treatment program described in paragraph (4). If driving a motor vehicle is necessary to perform the duties of the person's employment, the restriction also shall allow the person to drive in that person's scope of employment. The Department of Motor Vehicles shall not revoke the person's privilege to operate a motor vehicle under Section 13352, as provided in Section 13352.5, unless the offense occurred in a vehicle requiring a driver with a class A or class B driver's license, or with an endorsement specified in Section 15278.

(4) Either of the following:

(A) Participate, for at least 18 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, if available in the county of the person's residence or employment, as designated by the court. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate.

(B) Participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, if available in the county of the person's residence or employment. A person ordered to treatment pursuant to this subparagraph shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subparagraph is a

basis for reducing any other probation requirement or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

SEC. 49. Section 23195 of the Vehicle Code is amended to read:

23195. (a) Except as provided in subdivision (b), the interest of any registered owner of a motor vehicle which has been used in the commission of a violation of Section 23152 or 23153 for which the owner was convicted, is subject to impoundment as provided in this section. Upon conviction the court may order the vehicle impounded at the registered owner's expense for not less than one nor more than 30 days.

If the offense occurred within five years of a prior offense which resulted in conviction of a violation of Section 23152 or 23153, the prior conviction shall also be charged in the accusatory pleading and if admitted or found to be true by the jury upon a jury trial or by the court upon a court trial, the court shall, except in an unusual case where the interests of justice would best be served by not ordering impoundment, order the vehicle impounded at the registered owner's expense for not less than one nor more than 30 days.

If the offense occurred within five years of two or more prior offenses which resulted in convictions of violations of Section 23152 or 23153, the prior convictions shall also be charged in the accusatory pleading and if admitted or found to be true by the jury upon a jury trial or by the court upon a court trial, the court shall, except in an unusual case where the interests of justice would best be served by not ordering impoundment, order the vehicle impounded at the registered owner's expense for not less than one nor more than 90 days.

For purposes of this section the court may consider in the interests of justice factors such as whether impoundment of the vehicle would result in a loss of employment of the offender or the offender's family, impair the ability of the offender or the offender's family to attend school or obtain medical care, result in the loss of the vehicle because of inability to pay impoundment fees, or unfairly infringe upon community property rights or any other facts the court finds relevant. When no impoundment is ordered in an unusual case pursuant to this section, the court shall specify on the record and shall enter in the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(b) No vehicle which may be lawfully driven on the highway with a class C or class M driver's license, as specified in Section 12804.9, is subject to impoundment under this section if there is a community property interest in the vehicle owned by a person other than the defendant and the vehicle is the sole vehicle available to the defendant's immediate family which may be operated on the highway with a class C or class M driver's license.

SEC. 50. Section 34500 of the Vehicle Code is amended to read:

34500. The department shall regulate the safe operation of the following vehicles:

(a) Motortrucks of three or more axles which are more than 10,000 pounds gross vehicle weight rating.

(b) Truck tractors.

(c) Buses, schoolbuses, school pupil activity buses, youth buses, and general public paratransit vehicles.

(d) Trailers and semitrailers designed or used for the transportation of more than 10 persons, and the towing motor vehicle.

(e) Trailers and semitrailers, pole or pipe dollies, auxiliary dollies, and logging dollies used in combination with vehicles listed in subdivision (a), (b), (c), or (d). This subdivision does not apply to camp trailers, trailer coaches, and utility trailers.

(f) Any combination of a motortruck and any vehicle or vehicles set forth in subdivision (e) that exceeds 40 feet in length when coupled together, except combinations including camp trailers, trailer coaches, or utility trailers.

(g) Any truck, or any combination of a truck and any other vehicle, transporting hazardous materials.

(h) Manufactured homes which, when moved upon the highway, are required to be moved under a permit as specified in Section 35780 or 35790.

(i) A park trailer, as described in subdivision (b) of Section 18010 of the Health and Safety Code, which, when moved upon a highway, is required to be moved under a permit pursuant to Section 35780.

(j) Any other motortruck not specified in subdivisions (a) to (h), inclusive, or subdivision (k), that is regulated by the Public Utilities Commission or the Interstate Commerce Commission, but only for matters relating to hours of service and logbooks of drivers.

(k) Any commercial motor vehicle with a gross vehicle weight rating of 26,001 or more pounds or any commercial motor vehicle of any gross vehicle weight rating towing any vehicle described in subdivision (e) with a gross vehicle weight rating of more than 10,000 pounds, except combinations including camp trailers, trailer coaches, or utility trailers.

SEC. 51. Section 34505.1 of the Vehicle Code is amended to read:

34505.1. (a) Upon determining that a tour bus operator has either (1) failed to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, and, in the department's opinion, that failure presents an imminent danger to public safety or constitutes such a consistent failure as to justify a recommendation to the Public Utilities Commission or the Interstate Commerce Commission or (2) failed to enroll all drivers in the pull notice system as required by Section 1808.1, the department shall recommend to the Public Utilities Commission that the carrier's operating authority be suspended, denied, or revoked, or to the federal Highway Administration Office of Motor Carriers, that appropriate administrative action be taken against the carrier's

Interstate Commerce Commission operating authority, whichever is appropriate. For purposes of this subdivision, two consecutive unsatisfactory compliance ratings for an inspected terminal assigned because the tour bus operator failed to comply with the periodic report requirements of Section 1808.1 or the cancellation of the operator's enrollment by the Department of Motor Vehicles for nonpayment of required fees is a consistent failure. However, when recommending denial of an application for new or renewal authority, the department need not conclude that the carrier's failure presents an imminent danger to public safety or that it constitutes a consistent failure. The department need only conclude that the carrier's compliance with the safety-related matters described in paragraph (1) of subdivision (a) is sufficiently unsatisfactory to justify a recommendation for denial. The department shall retain a record, by operator, of every recommendation made pursuant to this section.

(b) Before transmitting a recommendation pursuant to subdivision (a), the department shall notify the carrier in writing of all of the following:

(1) That the department has determined that the carrier's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in a suspension, revocation, or denial of the carrier's operating authority by the California Public Utilities Commission or the Interstate Commerce Commission.

(3) That the carrier may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review is requested by the carrier, the department shall conduct and evaluate that review prior to transmitting any notification pursuant to subdivision (a).

SEC. 52. Section 34505.6 of the Vehicle Code is amended to read:

34505.6. (a) Upon determining that a motor carrier operating any vehicle described in subdivision (a), (b), (d), (e), (f), (g), or (k) of Section 34500 has either (1) failed to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, and, in the department's opinion, that failure presents an imminent danger to public safety or constitutes such a consistent failure as to justify a recommendation to the Public Utilities Commission or the Interstate Commerce Commission, or (2) failed to enroll all drivers in the pull notice system as required by Section 1808.1, the department shall recommend to the Public Utilities Commission that the carrier's operating authority be suspended, denied, or revoked, or to the federal Highway Administration Office of Motor Carriers, that appropriate administrative action be taken against the carrier's Interstate Commerce Commission operating authority, whichever is appropriate. For purposes of this subdivision, two consecutive unsatisfactory compliance ratings for an inspected

terminal assigned because the motor carrier failed to comply with the periodic report requirements of Section 1808.1 or the cancellation of the carrier's enrollment by the Department of Motor Vehicles for nonpayment of required fees is a consistent failure. The department shall retain a record, by operator, of every recommendation made pursuant to this section.

(b) Before transmitting a recommendation pursuant to subdivision (a), the department shall notify the carrier in writing of all of the following:

(1) That the department has determined that the carrier's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in a suspension, revocation, or denial of the carrier's operating authority by the California Public Utilities Commission or the Interstate Commerce Commission.

(3) That the carrier may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review pursuant to this paragraph is requested by the carrier, the department shall conduct and evaluate that review prior to transmitting any notification pursuant to subdivision (a).

SEC. 53. Section 35581 of the Vehicle Code is amended to read:

35581. (a) The Department of Transportation, in cooperation with the Department of California Highway Patrol, shall develop a plan for implementing or identifying new or existing scale facilities at major intermodal terminals which may serve as intermodal weighing facilities for weighing commercial vehicles which transport intermodal freight, prior to their entry onto any highway which is not specifically exempted from weight limitations by a local authority. The plan shall include consideration of options for financing the construction of required intermodal weighing facilities. The plan shall be submitted to the Legislature not later than August 1, 1989.

(b) The Department of Transportation may enter into agreements with local authorities or private entities to provide for exemption from weight restrictions for short distance movement to an intermodal weighing facility.

(c) The Department of Transportation shall submit a report, on an as needed basis as determined by the Director of Transportation, describing its progress in developing the intermodal weight determination program, and its recommendations for the future of the program.

SEC. 54. Section 35780.3 of the Vehicle Code is amended to read:

35780.3. A permit issued under Section 35780 for the movement of a park trailer, as described in subdivision (b) of Section 18010 of the Health and Safety Code, shall not be issued except to transporters, or licensed manufacturers and dealers.

SEC. 55. Section 36305 of the Vehicle Code is amended to read:

36305. The driver of any implement of husbandry shall possess a valid class C driver's license when operating a combination of

vehicles at a speed in excess of 25 miles per hour or towing any implement of husbandry as specified in subdivision (d), (e), or (j) of Section 36005.

SEC. 56. Section 40508 of the Vehicle Code is amended to read:

40508. (a) Any person willfully violating his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before a person authorized to receive a deposit of bail is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested.

(b) Any person willfully failing to pay a lawfully imposed fine for a violation of any provision of this code or a local ordinance adopted pursuant to this code within the time authorized by the court and without lawful excuse having been presented to the court on or before the date the fine is due is guilty of a misdemeanor regardless of the full payment of the fine after that time.

(c) If a person convicted of an infraction fails to pay a fine or any installment thereof within the time authorized by the court, the court may, except as otherwise provided in this subdivision, impound the person's driver's license and order the person not to drive for a period not to exceed 30 days. Before returning the license to the person, the court shall endorse on the reverse side of the license that the person was ordered not to drive, the period for which that order was made, and the name of the court making the order. If a defendant with a class C or M driver's license satisfies the court that impounding his or her driver's license and ordering the defendant not to drive will affect his or her livelihood, the court shall order that the person limit his or her driving for a period not to exceed 30 days to driving that is essential in the court's determination to the person's employment, including the person's driving to and from his or her place of employment if other means of transportation are not reasonably available. The court shall provide for the endorsement of the limitation on the person's license. The impounding of the license and ordering the person not to drive or the order limiting the person's driving does not constitute a suspension of the license, but a violation of the order constitutes contempt of court.

SEC. 56.5. Section 26.5 of this bill amends Section 12804.9 of the Vehicle Code (as amended by Section 19 of Chapter 928 of the Statutes of 1991) to incorporate the changes in that section proposed by Section 26 of this bill and the changes in Section 12804.9 of the Vehicle Code (as amended by Section 31.7 of Chapter 1360 of the Statutes of 1990) proposed by Section 2 of AB 846. If both bills are enacted, the changes proposed by both bills in Section 12804.9 shall be given effect in the manner proposed by Section 26.5 of this bill and those changes shall become operative at the same time that AB 846 becomes operative. Therefore, if this bill and AB 846 are both enacted and become effective on or before January 1, 1994, and this bill is enacted after AB 846, but this bill becomes operative first, Section 26 of this bill shall not become operative, and, on January 1,

1994, Section 26.5 of this bill shall become operative.

SEC. 57. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to put into effect as quickly as possible certain statutory changes that the Legislature intended to enact during the 1991–92 Regular Session, it is necessary for this act to take effect immediately.

CHAPTER 273

An act to amend Sections 1203, 1203.1b, and 1203.9 of the Penal Code, relating to probation.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 1203 of the Penal Code, as amended by Chapter 59 of the Statutes of 1993, is amended to read:

1203. (a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of the probation officer. As used in this code, "conditional sentence" shall mean the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) Except as provided in subdivision (j), in every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of

commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in the report his or her recommendation of the amount the defendant should be required to pay as a restitution fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report a recommendation as to whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund. The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney, nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered the report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) In every case in which a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person which could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or

his or her arrest, any person who has been convicted of arson, robbery, burglary, burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and was armed with the weapon at either of those times.

(2) Any person who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, or 288a, 288.5, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

(B) The person used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great

bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machinegun under Section 12220, or a silencer under Section 12520.

(f) When probation is granted in a case which comes within the provisions of subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to Section 13967 of the Government Code in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in Section 13967 of the Government Code.

(h) In any case in which a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement in any case where the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4) and the probationer has reimbursed the county that has jurisdiction over his or her probation case the reasonable costs of processing his or her request for interstate compact supervision. The amount and method of reimbursement shall be in accordance with Section 1203.1b.

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful

failure to pay and at the discretion of the court and as stated in the order, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

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

1203.1b. (a) In any case in which a defendant is convicted of an offense and granted probation, the court, taking into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, shall make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of probation, of conducting the presentence investigation and preparing the presentence report made pursuant to Section 1203, and of processing a jurisdictional transfer pursuant to Section 1203.9 or of processing a request for interstate compact supervision pursuant to Sections 11175 to 11179, inclusive. The reasonable cost of these services and of probation shall not exceed the amount determined to be the actual average cost thereof. The court shall order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of the costs. At a hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, and to confront and cross-examine adverse witnesses, and to disclosure of the evidence against the defendant, and a written statement of the findings of the court or the county officer. If the court determines that the defendant has the ability to pay all or part of the costs, the court shall set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability; or with the consent of the defendant, the court shall order the probation officer to set the amount of payment, which shall not exceed the maximum amount set by the court, and the manner in which the payment shall be made to the county. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution. The court may hold additional hearings during the probationary period.

If practicable, the court or the probation officer shall order payments to be made on a monthly basis. Execution may be issued on the order in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

A payment schedule for reimbursement of the costs of presentence investigation based on income shall be developed by the probation department of each county and approved by the presiding judges of the municipal and superior courts.

(b) The term "ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the

presentence report, processing a jurisdictional transfer pursuant to Section 1203.9, processing requests for interstate compact supervision pursuant to Sections 11175 to 11179, inclusive, and probation, and shall include, but shall not be limited to, the defendant's:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the defendant shall be able to obtain employment within the six-month period from the date of the hearing.

(4) Any other factor or factors that may bear upon the defendant's financial capability to reimburse the county for the costs.

(c) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the rendering court to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment. The court shall advise the defendant of this right at the time of rendering of the judgment.

(d) All sums paid by a defendant pursuant to this section shall be allocated for the operating expenses of the county probation department.

(e) This section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors.

SEC. 2.5. Section 1203.1b of the Penal Code is amended to read:

1203.1b. (a) In any case in which a defendant is convicted of an offense and granted probation or given a conditional sentence, the court, taking into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, shall make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of probation or a conditional sentence, of conducting the presentence investigation and preparing the presentence report made pursuant to Section 1203, and of processing a jurisdictional transfer pursuant to Section 1203.9 or of processing a request for interstate compact supervision pursuant to Sections 11175 to 11179, inclusive. The reasonable cost of these services and of probation or a conditional sentence shall not exceed the amount determined to be the actual average cost thereof. The court shall order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of the costs. At a hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, and to confront and cross-examine adverse witnesses, and to disclosure of the evidence against the defendant, and a written statement of the findings of the court or the county officer. If the

court determines that the defendant has the ability to pay all or part of the costs, the court shall set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability; or with the consent of the defendant, the court shall order the probation officer to set the amount of payment, which shall not exceed the maximum amount set by the court, and the manner in which the payment shall be made to the county. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution. The court may hold additional hearings during the probationary or conditional sentence period.

If practicable, the court or the probation officer shall order payments to be made on a monthly basis. Execution may be issued on the order in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

A payment schedule for reimbursement of the costs of presentence investigation based on income shall be developed by the probation department of each county and approved by the presiding judges of the municipal and superior courts.

(b) The term "ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the presentence report, processing a jurisdictional transfer pursuant to Section 1203.9, processing requests for interstate compact supervision pursuant to Sections 11175 to 11179, inclusive, and probation or conditional sentence, and shall include, but shall not be limited to, the defendant's:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the defendant shall be able to obtain employment within the six-month period from the date of the hearing.

(4) Any other factor or factors that may bear upon the defendant's financial capability to reimburse the county for the costs.

(c) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the rendering court to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment. The court shall advise the defendant of this right at the time of rendering of the judgment.

(d) All sums paid by a defendant pursuant to this section shall be allocated for the operating expenses of the county probation department.

(e) This section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors.

SEC. 3. Section 1203.9 of the Penal Code is amended to read:

1203.9. (a) Whenever any person is released upon probation, the case may be transferred to any court of the same rank in any other county in which the person resides permanently, meaning the stated intention to remain for the duration of probation; provided that the court of the receiving county shall first be given an opportunity to determine whether the person does reside in and has stated the intention to remain in that county for the duration of probation. If the court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, it may refuse to accept the transfer. The court and the probation department shall give the matter of investigating those transfers precedence over all actions or proceedings therein, except actions or proceedings to which special precedence is given by law, to the end that all those transfers shall be completed expeditiously.

(b) If the court of the receiving county finds that the person does permanently reside in or has permanently moved to the county, it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis.

(c) The order of transfer shall contain an order committing the probationer to the care and custody of the probation officer of the receiving county and an order for reimbursement of reasonable costs for processing the transfer to be paid to the sending county in accordance with Section 1203.1b. A copy of the orders and probation reports shall be transmitted to the court and probation officer of the receiving county within two weeks of the finding by that county that the person does permanently reside in or has permanently moved to that county, and thereafter the receiving court shall have entire jurisdiction over the case, with the like power to again request transfer of the case whenever it seems proper.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 1203.1b of the Penal Code proposed by both this bill and AB 309. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 1203.1b of the Penal Code, and (3) this bill is enacted after AB 309, in which case Section 2 of this bill shall not become operative.

CHAPTER 274

An act to amend Section 21113 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 21113 of the Vehicle Code is amended to read:

21113. (a) No person shall drive any vehicle or animal, nor shall any person stop, park, or leave standing any vehicle or animal, whether attended or unattended, upon the driveways, paths, parking facilities, or the grounds of any public school, state university, state college, unit of the state park system, county park, municipal airport, rapid transit district, transit development board, transit district, joint powers agency operating or managing a commuter rail system, or any property under the direct control of the legislative body of a municipality, or any state, county, or hospital district institution or building, or any educational institution exempted, in whole or in part, from taxation, or any harbor improvement district or harbor district formed pursuant to Part 2 (commencing with Section 5800) or Part 3 (commencing with Section 6000) of Division 8 of the Harbors and Navigation Code, a district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code, or state grounds served by the California State Police, or any property under the possession or control of a housing authority formed pursuant to Article 2 (commencing with Section 34240) of Part 2 of Division 24 of the Health and Safety Code, except with the permission of, and upon and subject to any condition or regulation which may be imposed by the legislative body of the municipality, or the governing board or officer of the public school, state university, state college, county park, municipal airport, rapid transit district, transit development board, transit district, joint powers agency operating or managing a commuter rail system, or state, county, or hospital district institution or building, or educational institution, or harbor district, or a district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code, or housing authority, or the Director of Parks and Recreation regarding units of the state park system or the state agency with jurisdiction over the grounds served by the California State Police.

(b) Every governing board, legislative body, or officer shall erect or place appropriate signs giving notice of any special conditions or regulations that are imposed under this section and every board, legislative body, or officer shall also prepare and keep available at the

principal administrative office of the board, legislative body, or officer, for examination by all interested persons, a written statement of all those special conditions and regulations adopted under this section.

(c) When any governing board, legislative body, or officer permits public traffic upon the driveways, paths, parking facilities, or grounds under their control then, except for those conditions imposed or regulations enacted by the governing board, legislative body, or officer applicable to the traffic, all the provisions of this code relating to traffic upon the highways shall be applicable to the traffic upon the driveways, paths, parking facilities, or grounds.

(d) With respect to the permitted use of vehicles or animals on property under the direct control of the legislative body of a municipality, no change in the use of vehicles or animals on the property, which had been permitted on January 1, 1976, shall be effective unless and until the legislative body, at a meeting open to the general public, determines that the use of vehicles or animals on the property should be prohibited or regulated.

(e) A transit development board may adopt ordinances, rules, or regulations to restrict, or specify the conditions for, the use of bicycles, motorized bicycles, skateboards, and roller skates on property under the control of, or any portion of property used by, the board.

(f) A public agency, including, but not limited to, the Regents of the University of California and the Trustees of the California State University, may adopt rules or regulations to restrict, or specify the conditions for, the use of bicycles, motorized bicycles, skateboards, and roller skates on public property under the jurisdiction of that agency.

(g) "Housing authority," for the purposes of this section, means a housing authority located within a county with a population of over six million people, and any other housing authority that complies with the requirements of this section.

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

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

In order to allow certain additional local public agencies to control traffic and thus reduce crime within their jurisdictions, it is necessary

that this act take effect immediately.

CHAPTER 275

An act to amend Section 1011.5 of the Military and Veterans Code, relating to veterans, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 1011.5 of the Military and Veterans Code is amended to read:

1011.5. (a) There is hereby created a Governor's Commission on a Southern California Veterans Home to advise the Governor and the Legislature on the establishment, pursuant to Section 1011, of one or more veterans homes in southern California.

(b) The commission shall consist of 12 members as follows:

(1) A member of the Veterans of Foreign Wars, appointed by the Governor from a list of three names submitted by the Commander of the Veterans of Foreign Wars to the Governor.

(2) A member of the American Legion, appointed by the Governor from a list of three names submitted by the Commander of the American Legion to the Governor.

(3) A member of the Disabled American Veterans, appointed by the Governor from a list of three names submitted by the Commander of the Disabled American Veterans to the Governor.

(4) A member of the AmVets, appointed by the Governor from a list of three names submitted by the Commander of the AmVets to the Governor.

(5) Three veterans, as defined by Section 980, appointed by the Governor.

(6) The Director of Veterans Affairs or his or her designee.

(7) A veteran, as defined by Section 980, appointed by the Speaker of the Assembly.

(8) A veteran, as defined by Section 980, appointed by the Senate Rules Committee.

(9) The Chairperson of the Senate Committee on Veterans Affairs and the Chairperson of the Assembly Committee on Governmental Organization, who shall serve as ex officio, nonvoting members.

(c) (1) In making appointments pursuant to paragraphs (1) to (4), inclusive, of subdivision (b), the Governor shall consult with the leadership of the veterans' organizations specified in those paragraphs.

(2) Notwithstanding any other provision of law, gubernatorial appointments made pursuant to subdivision (b) shall not be subject

to the approval of the Senate.

(d) The Governor shall appoint one of the members of the commission to serve as chairperson. The commission shall hold meetings at times and at places as it shall determine. Each member of the commission shall receive, for each day's attendance at each meeting of the commission, a per diem of fifty dollars ($50) and shall receive the same per diem for each day spent on official duties assigned by the commission. In addition, each member shall be reimbursed for his or her necessary traveling and other expenses incurred in the performance of his or her official duties. State agencies, including those identified in subdivision (g), may pay a portion of the commission's expenses.

(e) The commission shall report annually to the Governor and Legislature its findings and recommendations on the establishment of one or more state veterans homes in southern California. The findings and recommendations may include, but need not be limited to, the following matters:

(1) Possible sites for one or more state veterans homes. This recommendation shall give consideration to the availability of federal surplus property and any property available for no cost, or at less than market value, from public or private sources, and to a competitive site-selection process which would compare the relative merits of all available sites.

(2) The scope and level of health care, residential care, and recreational facilities, and other services and amenities to be provided at each home.

(3) The number of sites to be established and the resident population to be served at each site, including a description of the type, size, and projected population of each of the residential components of the home, including, but not limited to, skilled nursing care beds, intermediate care beds, domiciliary care independent living facilities, and day-care facilities.

(4) Estimates of design and planning costs, land acquisition costs, capital construction costs, and annual operating costs of each home that would be associated with various modes of construction.

(5) Financing options for the construction of each home, including, but not limited to, revenue bond financing, lease/purchase financing, and financial assistance available through the federal Veterans Administration State Home Grants Program.

(6) The management of each home by state or private administration.

(f) The commission shall also report to the Governor and Legislature in a timely manner concerning all development and construction activities associated with the Barstow Veterans' Home.

(g) State agencies, including, but not limited to, the Governor's Office of Planning and Research, the Department of Veterans Affairs, the Office of State Treasurer, and the Office of Project Development and Management in the Department of General Services, may provide staff assistance to the commission upon its

request.

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

(i) The commission may solicit and accept private donations, through the director, from any person, association, or entity interested in veterans' benefits.

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

In order to expedite construction of state veterans' homes in southern California to serve the state's burgeoning and aging veteran population as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 276

An act to amend Section 437c of the Code of Civil Procedure, relating to civil procedure.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 437c of the Code of Civil Procedure is amended to read:

437c. (a) Any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct. Notice of the motion and supporting papers shall be served on all other parties to the action at least 28 days before the time appointed for hearing. However, if the notice is served by mail, the required 28-day period of notice shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States, and if the notice is served by facsimile transmission, Express Mail, or another method of delivery providing for overnight delivery, the required 28-day period of notice shall be increased by two court days. The motion shall be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise. The filing of the motion shall not extend the time within

which a party must otherwise file a responsive pleading.

(b) The motion shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. The supporting papers shall include a separate statement setting forth plainly and concisely all material facts which the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for denial of the motion.

Any opposition to the motion shall be served and filed not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise. The opposition, where appropriate, shall consist of affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken.

The opposition papers shall include a separate statement which responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts which the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion.

Any reply to the opposition shall be served and filed by the moving party not less than five days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise.

Evidentiary objections not made at the hearing shall be deemed waived.

Sections 1005 and 1013, extending the time within which a right may be exercised or an act may be done, do not apply to this section.

Any incorporation by reference of matter in the court's file shall set forth with specificity the exact matter to which reference is being made and shall not incorporate the entire file.

(c) The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.

(d) Supporting and opposing affidavits or declarations shall be made by any person on personal knowledge, shall set forth

admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavits or declarations. Any objections based on the failure to comply with the requirements of this subdivision shall be made at the hearing or shall be deemed waived.

(e) If a party is otherwise entitled to a summary judgment pursuant to this section, summary judgment shall not be denied on grounds of credibility or for want of cross-examination of witnesses furnishing affidavits or declarations in support of the summary judgment, except that summary judgment may be denied in the discretion of the court, where the only proof of a material fact offered in support of the summary judgment is an affidavit or declaration made by an individual who was the sole witness to that fact; or where a material fact is an individual's state of mind, or lack thereof, and that fact is sought to be established solely by the individual's affirmation thereof.

(f) (1) A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if that party contends that the cause of action has no merit or that there is no affirmative defense thereto, or that there is no merit to an affirmative defense as to any cause of action, or both, or that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.

(2) A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment. However, a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion.

(g) Upon the denial of a motion for summary judgment, on the ground that there is a triable issue as to one or more material facts, the court shall, by written or oral order, specify one or more material facts raised by the motion as to which the court has determined there exists a triable controversy. This determination shall specifically refer to the evidence proffered in support of and in opposition to the motion which indicates that a triable controversy exists. Upon the grant of a motion for summary judgment, on the ground that there is no triable issue of material fact, the court shall, by written or oral order, specify the reasons for its determination. The order shall specifically refer to the evidence proffered in support of, and if applicable in opposition to, the motion which indicates that no

triable issue exists. The court shall also state its reasons for any other determination. The court shall record its determination by court reporter or written order.

(h) If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just.

(i) If the court determines at any time that any of the affidavits are presented in bad faith or solely for purposes of delay, the court shall order the party presenting the affidavits to pay the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur. Sanctions shall not be imposed pursuant to this subdivision except on notice contained in a party's papers, or on the court's own noticed motion, and after an opportunity to be heard.

(j) Except where a separate judgment may properly be awarded in the action, no final judgment shall be entered on a motion for summary judgment prior to the termination of the action, but the final judgment shall, in addition to any matters determined in the action, award judgment as established by the summary proceeding herein provided for.

(k) In actions which arise out of an injury to the person or to property, when a motion for summary judgment was granted on the basis that the defendant was without fault, no other defendant during trial, over plaintiff's objection, may attempt to attribute fault to or comment on the absence or involvement of the defendant who was granted the motion.

(*l*) A summary judgment entered under this section is an appealable judgment as in other cases. Upon entry of any order pursuant to this section except the entry of summary judgment, a party may, within 20 days after service upon him or her of a written notice of entry of the order, petition an appropriate reviewing court for a peremptory writ. If the notice is served by mail, the initial period within which to file the petition shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the notice is served by facsimile transmission, Express Mail, or another method of delivery providing for overnight delivery, the initial period within which to file the petition shall be increased by two court days. The superior court may, for good cause, and prior to the expiration of the initial period, extend the time for one additional period not to exceed 10 days.

(m) (1) If a motion for summary adjudication is granted, at the trial of the action, the cause or causes of action within the action, affirmative defense or defenses, claim for damages, or issue or issues of duty as to the motion which has been granted shall be deemed to

be established and the action shall proceed as to the cause or causes of action, affirmative defense or defenses, claim for damages, or issue or issues of duty remaining.

(2) In the trial of the action, the fact that a motion for summary adjudication is granted as to one or more causes of action, affirmative defenses, claims for damages, or issues of duty within the action shall not operate to bar any cause of action, affirmative defense, claim for damages, or issue of duty as to which summary adjudication was either not sought or denied.

(3) When an objection is made to a motion for summary adjudication, neither a party, nor a witness, nor the court may comment upon the grant or denial of a motion for summary adjudication, or upon the fact that a party did not seek to summarily adjudicate any issue.

(n) A cause of action has no merit if either of the following exists:

(1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded.

(2) A defendant establishes an affirmative defense to that cause of action.

(o) For purposes of motions for summary judgment and summary adjudication:

(1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on that cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The defendant or cross-defendant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

(2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The plaintiff or cross-complainant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

(p) Nothing in this section shall be construed to extend the period for trial provided by Section 1170.5.

(q) Subdivisions (a) and (b) shall not apply to actions brought

pursuant to Chapter 4 (commencing with Section 1159) of Title 3 of Part 3.

(r) For the purposes of this section, a change in law shall not include a later enacted statute without retroactive application.

CHAPTER 277

An act to amend Sections 52321, 52323, 52324, 52325, 52332, and 52422 of the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 52321 of the Food and Agricultural Code is amended to read:

52321. All money that is received by the director pursuant to this chapter shall be deposited in the Department of Food and Agriculture Fund and shall be expended only for the purpose of this chapter.

SEC. 2. Section 52323 of the Food and Agricultural Code is amended to read:

52323. The department's cost of carrying out this chapter shall be funded from money that is received by the director pursuant to this chapter. The director shall also pay annually, in arrears, 30 percent of the total assessment received pursuant to Section 52354 or sixty-five thousand dollars ($65,000), whichever sum is greater, to counties as a subvention for costs incurred in the enforcement of this chapter. However, in no case shall the annual subvention to the counties exceed one hundred twenty thousand dollars ($120,000). The department's costs of administering this chapter shall be paid before allocating funds to the counties under this section.

This section shall become inoperative on July 1, 1999, and as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 52324 of the Food and Agricultural Code is amended to read:

52324. The subvention program under Section 52323 is an optional program that the counties may choose to participate in. The subvention to counties under Section 52323 shall be apportioned as follows:

(a) Counties with no registered seed labelers shall annually receive one hundred dollars ($100).

(b) Counties with registered seed labeler operations shall receive subventions based upon units of enforcement activity generated by

the registered seed labeler operations within the county. The units of activity shall be determined by the director, taking into consideration the number of lots and kinds of seed labeled by each registered seed labeler operation within the county. The rate per unit of activity shall be established by dividing the total statewide units of activity into the annual funds available to the counties under Section 52323 after deducting the amount required for subventions in subdivision (a). Apportionment to individual counties shall be based upon the county's total units of activity times the established rate.

This section shall become inoperative on July 1, 1999, and as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 52325 of the Food and Agricultural Code is amended to read:

52325. Commissioners of counties that choose to participate in the subvention program shall enter into a cooperative agreement with the director, whereby the commissioner agrees to maintain a statewide compliance level, determined by the director, on all seed within the county. The cooperative agreement shall be in effect for a five-year period. The annual apportionment calculated under subdivision (b) of Section 52324 to each individual participating county shall be established in a memorandum of understanding between the commissioner and the director.

This section shall become inoperative on July 1, 1999, and as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 52332 of the Food and Agricultural Code is amended to read:

52332. The director may, by regulation, adopt all of the following:

(a) A list of the plants and crops that the director finds are or may be grown in this state from agricultural or vegetable seed.

(b) A list of the plants and crops that the director finds are detrimental to agriculture if they occur incidentally in other crops, and which, therefore, are classed as weed seed except if sold alone or as a specific constituent of a definite seed mixture.

(c) A list of noxious weed seed that the director finds are prohibited noxious weed seed, as defined in this chapter.

(d) A list of those noxious weed seed that are not classified as prohibited noxious weed seed, and which, therefore, are classed by this chapter as restricted noxious weed seed.

(e) A list of seed-certifying agencies that the director finds qualified to certify as to the variety, purity, quality, or other matter of agricultural or vegetable seed. The director shall consult with the Director of the University of California Agricultural Experiment Station before approving the qualifications of any agency to certify as to variety, type, strain, or other genetic character of agricultural

or vegetable seed.

(f) A list of substances, which are likely to be used for treating grain or other crop seed, that the director finds and determines are toxic to human beings or animals if so used, together with an appropriate warning or caution statement for each such substance.

(g) Establish methods and procedures, upon the recommendation of the board, for the mandatory conciliation or mediation of disputes between labelers and any persons concerning the conformance with label statements as required by this chapter as a prerequisite to pursuing other dispute resolution mechanisms, including, but not limited to, litigation. However, mediation or conciliation shall not affect any enforcement action by the director pursuant to this chapter.

(h) Establish additional labeling requirements for coated, pelleted, encapsulated, mat, tape, or any other germination medium or device used on agricultural or vegetable seed in order that the purchaser or consumer will be informed as to the actual amount of seed purchased.

SEC. 6. Section 52422 of the Food and Agricultural Code is amended to read:

52422. The director, or any commissioner with the approval of the director, may annually enter into a cooperative agreement with a qualified seed certification agency for the services that they are authorized to perform, based upon the approximate cost of the services. The approximate cost of the services rendered shall be based on applications to grow certified seed, and certified seed conditioners' activities within the county, as determined by the cooperating seed certification agency. Upon the request of a recognized seed-certifying agency, the director, through the director's staff or through the commissioners, may perform the services authorized by this article. Compensation for services performed by a commissioner shall be transmitted to the commissioner for such disposition as may be directed by the board of supervisors. Compensation for services that are performed by the director shall be paid into the Department of Food and Agriculture Fund.

CHAPTER 278

An act to amend Section 10295.5 of the Public Contract Code, and to amend Sections 663, 2717, and 2770 of, and to add Sections 663.1 and 663.2 to, the Public Resources Code, relating to mining, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 10295.5 of the Public Contract Code is amended to read:

10295.5. (a) Notwithstanding any other provision of law, no state agency shall purchase or utilize sand, gravel, aggregates, or other minerals produced from a surface mining operation subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), unless the operation is identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code as having either of the following:

(1) An approved reclamation plan and financial assurances covering the affected surface mining operation.

(2) An appeal pending before the State Mining and Geology Board pursuant to subdivision (e) of Section 2770 of the Public Resources Code with respect to the reclamation plan or financial assurances.

(b) The Department of General Services shall revise its procedures and procurement specifications for state purchases of sand, gravel, aggregates, and other minerals to ensure maximum compliance with this section.

(c) For purposes of this section, "minerals" means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.

(d) The requirements of this section shall apply to mining operations on federal lands or Indian lands that are subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code) pursuant to a memorandum of understanding between the Department of Conservation and the federal agency having jurisdiction over the lands.

(e) (1) This section does not apply to construction or maintenance contracts if the contractor has entered into a written subcontract, executed prior to July 1, 1993, for the purchase of materials from a mine operator that would not otherwise qualify

under the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code.

(2) This subdivision shall become inoperative on July 1, 1996.

(f) This section shall become operative on July 1, 1993.

SEC. 2. Section 663 of the Public Resources Code is amended to read:

663. (a) No member of the board shall participate in any action of the board or attempt to influence any decision of the board that involves himself or herself, or any person with whom he or she is connected, as a director, officer, paid consultant, or full-time or part-time employee, or in which he or she has a financial interest within the meaning of Section 87103 of the Government Code.

(b) No board member shall participate in any proceeding before any state or local agency as a consultant or in any other capacity on behalf of any person who engages in surface mining operations.

(c) Upon request of any person, or on his or her own initiative, the Attorney General may file a complaint in the superior court for the county in which the board has its principal office alleging that a board member has knowingly violated this section, alleging the facts upon which the allegation is based, and asking that the member be removed from office. Further proceedings shall be in accordance as nearly as practicable with rules governing civil actions. If after trial the court finds that the board member has knowingly violated this section it shall order the member removed from office.

SEC. 3. Section 663.1 is added to the Public Resources Code, to read:

663.1. (a) For the purposes of this section, "ex parte communication" means any oral or written communication between a member of the board and an interested person about a matter within the board's jurisdiction that does not occur in a public hearing, workshop, or other official proceeding, or on the official record of the proceeding on the matter.

(b) For purposes of this section, "a matter within the board's jurisdiction" means any action on a reclamation plan or financial assurance appealed pursuant to subdivision (e) of Section 2770, any review of an order setting administrative penalties pursuant to Section 2774.2, or any review of an appeal pursuant to Section 2775.

(c) (1) A board member or any person, other than a staff member of the board, department, or any other state agency, who is acting in his or her official capacity and who intends to influence the decision of the board on a matter within the board's jurisdiction, shall not conduct an ex parte communication, unless the board member or the person who engages in the communication with the board member discloses that communication in one of the following ways:

(A) The board member or the person fully discloses the communication and makes public the ex parte communication by providing a full report of the communication to the executive officer or, if the communication occurs within seven days of the next board

hearing, to the board on the record of the proceeding of that hearing.

(B) When two or more board members receive substantially the same written communication or receive the same oral communication from the same party on the same matter, one of the board members fully discloses the communication on behalf of the other board member or members who received the communication and requests in writing that it be placed in the board's official record of the proceeding.

(d) (1) The board shall adopt standard disclosure forms for reporting ex parte communications which shall include, but not be limited to, all of the following information:

(A) The date, time, and location of the communication.

(B) The identity of the person or persons initiating and the person or persons receiving the communication.

(C) A complete description of the content of the communication, including the complete text of any written material that was part of the communication.

(2) The executive officer shall place in the public record any report of an ex parte communication.

(e) Communications shall cease to be ex parte communications when fully disclosed and placed in the board's official record.

(f) In addition to any other applicable penalty, a board member who knowingly violates this section is subject to a civil fine, not to exceed seven thousand five hundred dollars ($7,500). Notwithstanding any law to the contrary, the court may award attorneys' fees and costs to the prevailing party.

SEC. 4. Section 663.2 is added to the Public Resources Code, to read:

663.2. (a) No board member shall make, participate in making, or in any other way attempt to use his or her official position to influence a board decision about which the member has knowingly had an ex parte communication that has not been reported pursuant to Section 663.1.

(b) In addition to any other applicable penalty, including a civil fine imposed pursuant to subdivision (f) of Section 663.1, a board member who knowingly violates this section shall be subject to a civil fine, not to exceed seven thousand five hundred dollars ($7,500). Notwithstanding any law to the contrary, the court may award attorneys' fees and costs to the prevailing party.

SEC. 5. Section 2717 of the Public Resources Code is amended to read:

2717. (a) The board shall submit to the Legislature on December 1st of each year a report on the actions taken pursuant to this chapter during the preceding fiscal year. The report shall include a statement of the actions, including legislative recommendations, which are necessary to carry out more completely the purposes and requirements of this chapter.

(b) For purposes of ensuring compliance with Section 10295.5 of the Public Contract Code, on and after July 1, 1993, the department

shall, at a minimum, quarterly publish in the California Regulatory Notice Register, or otherwise make available upon request to the Department of General Services or any other state agency, a list identifying all of the following:

(1) Surface mining operations for which a report has been submitted pursuant to Section 2207 which indicates that the reclamation plan and the financial assurances have been approved.

(2) Surface mining operations for which an appeal is pending before the board pursuant to subdivision (e) of Section 2770, provided that the appeal shall not have been pending before the board for more than 180 days.

SEC. 6. Section 2770 of the Public Resources Code is amended to read:

2770. (a) Except as provided in this section, no person shall conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation pursuant to this article.

(b) Any person with an existing surface mining operation who has vested rights pursuant to Section 2776 and who does not have an approved reclamation plan shall submit a reclamation plan to the lead agency not later than March 31, 1988. If a reclamation plan application is not on file by March 31, 1988, the continuation of the surface mining operation is prohibited until a reclamation plan is submitted to the lead agency. For purposes of this subdivision, reclamation plans may consist of all or the appropriate sections of any plans or written agreements previously approved by the lead agency or another agency, together with any additional documents needed to substantially meet the requirements of Sections 2772 and 2773 and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, provided that all documents which together were proposed to serve as the reclamation plan are submitted for approval to the lead agency in accordance with this chapter.

(c) If a person with an existing surface mining operation has received lead agency approval of its financial assurances for reclamation prior to January 1, 1991, the lead agency shall administratively review those existing financial assurances in accordance with subdivision (d) prior to January 1, 1992. The review of existing financial assurances shall not be considered a project for purposes of Division 13 (commencing with Section 21000). Any person with an existing surface mining operation which does not have financial assurances that received lead agency approval prior to January 1, 1991, shall submit financial assurances for reclamation for review in accordance with subdivision (d).

(d) The lead agency's review of reclamation plans submitted pursuant to subdivision (b) or of financial assurances pursuant to subdivision (c) is limited to whether the plan or the financial assurances substantially meet the applicable requirements of

Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, but, in any event, the lead agency shall require that financial assurances for reclamation be sufficient to perform reclamation of lands remaining disturbed. Reclamation plans or financial assurances determined to substantially meet these requirements shall be approved by the lead agency for purposes of this chapter. Reclamation plans or financial assurances determined not to substantially meet these requirements shall be returned to the operator within 60 days. The operator has 60 days to revise the plan or financial assurances to address identified deficiencies, at which time the revised plan or financial assurances shall be returned to the lead agency for review and approval. Except as specified in subdivision (e) or (i), unless the operator has filed on or before July 1, 1990, an appeal pursuant to subdivision (e) with regard to nonapproval of the reclamation plan, or has filed on or before January 1, 1994, an appeal pursuant to subdivision (e) with regard to nonapproval of financial assurances, and that appeal is pending before the board, the continuation of the surface mining operation is prohibited until a reclamation plan and financial assurances for reclamation are approved by the lead agency.

(e) Any person who, based on the evidence of the record, can substantiate that a lead agency has either (1) failed to act according to due process or has relied on considerations not related to the specific applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, in reaching a decision to deny approval of a reclamation plan or financial assurances for reclamation, (2) failed to act within a reasonable time of receipt of a completed application, or (3) failed to review and approve reclamation plans or financial assurances as required by subdivisions (c) and (d), may appeal that action or inaction to the board.

(f) The board may decline to hear an appeal if it determines that the appeal raises no substantial issues related to the lead agency's review pursuant to this section.

(g) Appeals that the board does not decline to hear shall be scheduled and heard at a public hearing within 45 days of the filing of the appeal, or any longer period as may be mutually agreed upon by the board and the person filing the appeal. In hearing an appeal, the board shall only determine whether the reclamation plan or the financial assurances substantially meet the applicable requirements of Sections 2772, 2773, 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774. A reclamation plan or financial assurances determined to meet these requirements shall be approved. A reclamation plan or financial assurances determined not to meet these requirements shall be returned to the person filing the appeal with a notice of deficiencies, who shall be granted, once only, a period of 30 days, or a longer period mutually agreed upon by the operator and the board, to

correct the noted deficiencies and submit the revised reclamation plan or the revised financial assurances to the lead agency for review and approval.

(h) (1) Within 90 days of a surface mining operation becoming idle, as defined in Section 2727.1, the operator shall submit to the lead agency for review and approval, an interim management plan. The review and approval of an interim management plan shall not be considered a project for purposes of Division 13 (commencing with Section 21000). The approved interim management plan shall be considered an amendment to the surface mining operation's approved reclamation plan, for purposes of this chapter. The interim management plan shall provide measures the operator will implement to maintain the site in compliance with this chapter, including, but not limited to, all permit conditions.

(2) The interim management plan may remain in effect for a period not to exceed five years, at which time the lead agency shall do one of the following:

(A) Renew the interim management plan for another period not to exceed five years, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

(B) Require the surface mining operator to commence reclamation in accordance with its approved reclamation plan.

(3) The financial assurances required by Section 2773.1 shall remain in effect during the period that the surface mining operation is idle. If the surface mining operation is still idle after the expiration of its interim management plan, the surface mining operation shall commence reclamation in accordance with its approved reclamation plan.

(4) Within 60 days of the receipt of the interim management plan, or a longer period mutually agreed upon by the lead agency and the operator, the lead agency shall review and approve the plan in accordance with its ordinance adopted pursuant to subdivision (a) of Section 2774, so long as the plan satisfies the requirements of this subdivision, and so notify the operator in writing. Otherwise, the lead agency shall notify the operator in writing of any deficiencies in the plan. The operator shall have 30 days, or a longer period mutually agreed upon by the operator and the lead agency, to submit a revised plan.

(5) The lead agency shall approve or deny approval of the revised interim management plan within 60 days of receipt. If the lead agency denies approval of the revised interim management plan, the operator may appeal that action to the lead agency's governing body, which shall schedule a public hearing within 45 days of the filing of the appeal, or any longer period mutually agreed upon by the operator and the governing body.

(6) Unless review of an interim management plan is pending before the lead agency, or an appeal is pending before the lead agency's governing body, a surface mining operation which remains idle for over one year after becoming idle as defined in Section 2727.1

without obtaining approval of an interim management plan shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan.

(i) Any enforcement action which may be brought against a surface mining operation for operating without an approved reclamation plan, financial assurance, or interim management plan, shall be held in abeyance pending review pursuant to subdivision (b), (c), (d), or (h) or the resolution of an appeal filed with the board pursuant to subdivision (e), or with a lead agency governing body pursuant to subdivision (h).

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

On July 1, 1993, provisions of law become operative which prohibit state agencies from purchasing or utilizing minerals produced from surface mining operations subject to the Surface Mining and Reclamation Act of 1975, unless the mine operator is identified in a specified list prepared and published by the Department of Conservation on a quarterly basis. In order to prevent these provisions from imposing an unreasonable hardship on mine operators who are complying with these requirements, and to extend the deadline for a mine operator to appeal the decision of the lead agency to deny approval of financial assurances, it is necessary that this act take effect immediately.

CHAPTER 279

An act to amend Section 29124 of the Government Code, relating to local government finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 29124 of the Government Code is amended to read:

29124. (a) If at the beginning of any fiscal year, the appropriations applicable to that year have not been finally determined and adopted, the auditor shall approve payments for the support of the various budget units in accordance with the following authorizations:

(1) Except as otherwise provided in subdivision (b), the several amounts set forth in the proposed budget for the objects and purposes therein specified, except obligations for fixed assets,

residual equity transfers, and for new permanent employee positions, are deemed appropriated until the adoption of the final budget.

(2) Obligations for fixed assets, residual equity transfers, and for new permanent employee positions are deemed appropriated until the adoption for the final budget if specifically approved by the board. For the purposes of this subdivision, the words "new permanent employee positions" do not include any employee positions created in lieu of an employee position which is abolished.

(3) If the proposed budget has not been approved by the board, the amounts deemed appropriated shall be based on the budget of the preceding year, excluding fixed assets and residual equity transfers unless specifically approved by the board.

(b) Notwithstanding any other provision of this section, prior to the adoption of a final budget, the board of supervisors may impose expenditure limitations that are more restrictive than those contained in this section.

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

In order that counties may take necessary actions to reduce expenditures in their budgets on July 1, 1993, or soon thereafter at the beginning of the fiscal year rather than having to make more severe reductions later in the fiscal year, it is necessary that this act take effect immediately.

CHAPTER 280

An act to amend Section 1596.792 of the Health and Safety Code, relating to child day care.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 1596.792 of the Health and Safety Code is amended to read:

1596.792. This chapter and Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30) do not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any community care facility, as defined by Section 1502.

(d) Any family day care home providing care for the children of only one family in addition to the operator's own children.

(e) Any cooperative arrangement between parents for the care of

their children where no payment is involved and the arrangement meets all of the following conditions:

(1) In a cooperative arrangement, parents shall combine their efforts so that each parent, or set of parents, rotates as the responsible care giver with respect to all the children in the cooperative.

(2) Any person caring for children shall be a parent, legal guardian, stepparent, grandparent, aunt, uncle, or adult sibling of at least one of the children in the cooperative.

(3) There can be no payment of money or receipt of in-kind income in exchange for the provision of care. This does not prohibit in-kind contributions of snacks, games, toys, blankets for napping, pillows, and other materials parents deem appropriate for their children. It is not the intent of this paragraph to prohibit payment for outside activities, the amount of that may not exceed the actual cost of the activity.

(4) No more than 12 children are receiving care in the same place at the same time.

(f) Any arrangement for the receiving and care of children by a relative.

(g) Any public recreation program. "Public recreation program" means a program operated by the state, city, county, special district, school district, community college district, chartered city, or chartered city and county that meets either of the following criteria:

(1) The program is operated only during hours other than normal school hours for grades K–12, inclusive, in the public school district where the program is located, or operated only during periods when students in grades K–12, inclusive, are normally not in session in the public school district where the program is located, for either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

In determining "normal school hours" or periods when students are "normally not in session," the State Department of Social Services shall, where appropriate, consider the normal school hours or periods when students are normally not in session for students attending a year-round school.

(2) The program is provided to children who are over the age of four years and nine months and not yet enrolled in school and the program is operated during either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

(3) The program is provided to children under the age of four years and nine months with sessions that run 12 hours per week or less and are 12 weeks or less in duration. A program subject to this paragraph may permit children to be enrolled in consecutive

sessions throughout the year. However, the program shall not permit children to be enrolled in a combination of sessions that total more than 12 hours per week for each child.

(h) Extended day care programs operated by public or private schools.

(i) Any school parenting program or adult education child care program that satisfies both of the following:

(1) Is operated by a public school district or operated by an individual or organization pursuant to a contract with a public school district.

(2) Is not operated by an organization specified in Section 1596.793.

(j) Any child day care program that operates only one day per week for no more than four hours on that one day.

(k) Any child day care program that offers temporary child care services to parents and which satisfies both of the following:

(1) The services are only provided to parents and guardians who are on the same premises as the site of the child day care program.

(2) The child day care program is not operated on the site of a ski facility, shopping mall, department store, or any other similar site identified by the department by regulation.

(*l*) Any program that provides activities for children of an instructional nature in a classroom-like setting and satisfies both of the following:

(1) Is operated only during periods of the year when students in grades K–12, inclusive, are normally not in session in the public school district where the program is located due to regularly scheduled vacations.

(2) Offers any number of sessions during the period specified in paragraph (1) that when added together do not exceed a total of 30 days when only schoolage children are enrolled in the program or 15 days when children younger than schoolage are enrolled in the program.

CHAPTER 281

An act to amend Section 2 of the Orange County Flood Control Act (Chapter 723 of the Statutes of 1927), relating to the Orange County Flood Control District.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 2 of the Orange County Flood Control Act (Chapter 723 of the Statutes of 1927) is amended to read:

Sec. 2. (a) The purposes of this act are to provide for the control

of the flood and storm waters of the district, and the flood and storm waters of streams that have their source outside of the district, but which flow into the district, and to conserve those waters for beneficial and useful purposes by spreading, storing, retaining, and causing them to percolate into the soil within the district, or outside the district, or to save or conserve in any manner all or any of those waters and protect from damage from those flood or storm waters, the harbors, waterways, public highways, and property in the district.

(b) The Orange County Flood Control District is hereby declared to be a body corporate and politic and has all of the following powers:

(1) To have perpetual succession.

(2) To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(3) To adopt a seal and alter it at pleasure.

(4) To take by grant, purchase, gift, devise, or lease, and to hold, use, enjoy, and to sell, lease, exchange, or dispose of real or personal property of every kind, within or outside the district, necessary to the full exercise of its powers.

(5) To acquire, or contract to acquire, lands, rights-of-way, easements, privileges and property of every kind, and to construct, maintain, and operate any and all works or improvements within or outside the district necessary or proper to carry out any of the objects or purposes of this act, and to complete, extend, add to, repair, or otherwise improve any works or improvements acquired by it as authorized in this act.

(6) To exercise the right of eminent domain, either within or outside the district, to take any property necessary to carry out any of the objects or purposes of this act.

(7) To incur indebtedness, and to issue bonds in the manner provided in this act.

(8) To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district in the manner provided in this act.

(9) To make contracts, and to employ labor, and to do all acts necessary for the full exercise of the powers of the district, or any of the officers thereof, by this act.

(10) To grant or otherwise convey to counties, cities and counties, cities, or towns, easements for street and highway purposes, over, along, in, through, across, or under any real property owned by the district.

(11) To remove, carry away, and dispose of any rubbish, trash, debris, or other inconvenient matter that may be dislodged, transported, conveyed, or carried by means of, through, in, or along the works and structures operated or maintained hereunder and deposited upon the property of the district or elsewhere.

(12) To sell or dispose of any property, or any interest therein, or lease or rent any property, or any interest therein, whenever, in the judgment of the board of supervisors, the property, or any interest

therein or part thereof, is not required for the purposes of the district, or property may be leased, or included in community leases embracing adjoining lands, for any purpose, including leases for mining or extracting oil, gas, hydrocarbon substances, or other minerals, without interfering with the use of the property for the purposes of the district. If it appears that wells drilled upon private lands are draining or may drain oil, gas, or other hydrocarbon substances from lands owned by the district and operations for the production of oil, gas, or other hydrocarbons on land owned by the district might interfere with the use of that land for the purposes of the district, the district may enter into agreements with the owners or operators of the wells for the payment of compensation to the district for drainage in lieu of drilling offset wells upon the land owned by the district, and to pay any compensation received into the general fund of the district and use the compensation for the purposes of this act. However, nothing in this section authorizes the board of supervisors, or other governing body of the district, or any officer thereof, to sell, lease, or otherwise dispose of any water, water right, reservoir space, or storage capacity, or any interest or space therein, except as provided by Section 17. The district may also grant to the United States of America, or any agency thereof authorized to accept and pay for land which lies within any channel, dam, or reservoir site, improved or constructed, in whole or in part, with federal funds, upon the payment to the district of the actual cost thereof as determined by the board of supervisors of the district. The district, by and through its board of supervisors, may warrant and guarantee the title of all lands so transferred to the United States under this section.

(13) Pursuant to paragraph (12), to lease or rent any property, or any interest therein or part thereof, if the board adopts a resolution that meets all of the following requirements, as applicable:

(A) Includes all of the following findings, based on evidence set forth in the minutes of the meeting:

(i) The property, or any interest therein or part thereof, is no longer or not yet needed for district uses and purposes, including, but not limited to, flood protection and water conservation, and the lease or rental use will not conflict with the uses and purposes of the district.

(ii) The lease or rental is consistent with the city or county general plan, specific plan, or other plans or policies adopted for the area within which the property is located, including any plans and regulations adopted pursuant to Chapter 4 (commencing with Section 8400) of Part 2 of Division 5 of the Water Code.

(iii) The lease or rental is consistent with city or county zoning ordinances, regulations, and policies adopted for the area within which the property is located.

(iv) The lease or rental is consistent with the city or county building regulations and policies adopted for the area within which the property is located.

(B) In the case of a rental, specifies the rental period and the approximate date on which the property will be needed for the uses and purposes of the district.

(C) For any property acquired by the district through eminent domain, declares that the property was acquired through eminent domain in accordance with Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure.

(14) To monitor, test, or inspect drainage, flood, storm, or other waters within the district for the purpose of recording, determining, and reporting the quality of the waters to appropriate regional water quality control boards.

(15) To assist the County of Orange and any city within the county in emergency operations to control or mitigate the effect of tides, waves, and ocean currents on the Orange County shoreline.

(16) To carry on technical and other investigations, examinations, or tests of all kinds, make measurements, collect data, and make analyses, studies, and inspections pertaining to water supply, control of floods, use of water, water quality, nuisance, pollution, waste, and contamination of water, both within and outside the district.

(17) To regulate, prohibit, or control the discharge of pollutants, waste, or any other material into the district's facilities by requiring dischargers to obtain a permit from the district prior to any discharge and by prohibiting the discharge of pollutants or other material which does or may cause a nuisance into the district's facilities without first obtaining a permit from the district, but, if a federal permit has been issued for the discharge, a permit may be issued by the district at no fee to the discharger; except as provided in this act, to require a fee to be collected prior to the issuance of a discharge permit, if the amount of the fee does not exceed the cost of issuing the permit; to require all permitholders to indemnify the district from any and all damages, penalties, or other expenses imposed on or required of the district by state or federal agencies due to any discharge by the permitholders into the district facilities.

(18) To establish compliance with any federal, state, or local law, order, regulation, or rule relating to water pollution or the discharge of pollutants, waste, or any other material into the district's facilities. For this purpose, any authorized representative of the district, upon presentation of his or her credentials or, if necessary under the circumstances, after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, has the right of entry to any premises on which a water pollution, waste, or contamination source is located for the purpose of inspecting the source, including securing samples of discharges therefrom, or any records required to be maintained in connection therewith by federal, state, or local law, order, regulation, or rule.

CHAPTER 282

An act to amend Section 27287 of the Government Code, relating to real estate.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 27287 of the Government Code is amended to read:

27287. Unless it belongs to the class provided for in either Sections 27282 to 27286, inclusive, or Sections 1202 or 1203, of the Civil Code, or is a fictitious mortgage or deed of trust as provided in Sections 2952, or 2963, of the Civil Code, or is a fictitious oil and gas lease as provided in Section 1219 of the Civil Code, or is a claim of lien, as provided in Section 3084 of the Civil Code, or a notice of completion, as provided in Section 3093 of the Civil Code, before an instrument can be recorded its execution shall be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary or other person executing it on behalf of the corporation, or, except for any mortgage, deed of trust, or security agreement, proved by subscribing witness or as provided in Sections 1198 and 1199 of the Civil Code, and the acknowledgment or proof certified as prescribed by law.

CHAPTER 283

An act to add Section 76392 to the Education Code, relating to community colleges.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 76392 is added to the Education Code, to read:

76392. (a) Notwithstanding Section 76360, the governing board of the Glendale Community College District may require payment of a parking fee at a campus in excess of the limits set forth in subdivision (a) of Section 76360 for the purpose of funding the construction of oncampus parking facilities if both of the following conditions exist at the campus:

(1) The full-time equivalent students (FTES) per parking space on the campus exceeds the statewide average FTES per parking space on community college campuses.

(2) The market price per square foot of land adjacent to the campus exceeds the statewide average market price per square foot of land adjacent to community college campuses.

If the governing board requires payment of a parking fee in excess of the limits set forth in subdivision (a) of Section 76360, the fee may not exceed the actual cost of constructing oncampus parking facilities. However, the sum of any fees imposed pursuant to this section and Section 76360 shall not exceed sixty dollars ($60) per semester or thirty dollars ($30) per intersession. Students who receive financial assistance pursuant to any of the programs described in subdivision (g) of Section 76300 shall be exempt from parking fees imposed pursuant to this section that exceed twenty dollars ($20) per semester.

(b) Nothing in this section shall be construed to affect the Pasadena Community College District.

SEC. 2. Due to the unique circumstances concerning the Glendale Community College District, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 284

An act to amend Section 31648.3 of the Government Code, relating to the County Employees Retirement Law of 1937.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 31648.3 of the Government Code is amended to read:

31648.3. A member who is a full-time employee and returns within 12 months of the date of layoff to full-time service following a period of layoff commencing on or after January 1, 1981, but not to exceed 12 months, may receive service credit for the period of the absence, but not to exceed one year, upon the payment of the contributions that the member would have paid during that period, together with the interest that the contributions would have earned had they been on deposit, if the member was not absent. The contributions may be paid in lump sum or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is claimed. The service credit provided by this section shall be provided only to persons who have returned to employment under the procedures of the employer for returning laid-off employees to work and shall not exceed one year of service credit for each layoff period. The decision of the member to redeposit withdrawn contributions shall be made within five years from the

date the member is rehired or the effective date of the adoption by the county board of supervisors of this section. Upon completion of the redeposit with interest, the entry age of the member shall be adjusted to the original age of entry and membership is reestablished to that date.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county.

CHAPTER 285

An act to amend Sections 1785.3, 1785.10, 1785.11, 1785.13, 1785.14, 1785.16, 1785.25, 1785.42, and 1789.16 of, and to add Section 1785.6 to, the Civil Code, relating to credit, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

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

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

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

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

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

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

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

(b) "Consumer" means a natural individual.

(c) "Consumer credit report" means any written, oral, or other communication of any information by a consumer credit reporting

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

The term does not include (1) any report containing information solely as to transactions or experiences between the consumer and the person making the report, (2) any communication of that information or information from a credit application by a consumer that is internal within the organization that is the person making the report or that is made to an entity owned by, or affiliated by corporate control with, that person; provided that the consumer is informed by means of a clear and conspicuous written disclosure that information contained in the credit application may be provided to these persons; however, where a credit application is taken by telephone, disclosure shall initially be given orally at the time the application is taken, and a clear and conspicuous written disclosure shall be made to the consumer in the first written communication to that consumer after the application is taken, (3) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device, (4) any report by a person conveying a decision whether to make a specific extension of credit directly or indirectly to a consumer in response to a request by a third party, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures to the consumer required under Section 1785.20, (5) any report containing information solely on a consumer's character, general reputation, personal characteristics, or mode of living which is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on, or others with whom he is acquainted or who may have knowledge concerning those items of information, (6) any communication about a consumer in connection with a credit transaction which is not initiated by the consumer, between persons who are affiliated (as defined in Section 150 of the Corporations Code) by common ownership or common corporate control (as defined by Section 160 of the Corporations Code), if either of those persons has complied with paragraph (2) of subdivision (b) of Section 1785.20.1 with respect to a prequalifying report from which the information communicated is taken and provided the consumer has consented to the provision and use of the prequalifying report in writing, (7) any consumer credit report furnished for use in connection with a transaction which consists of an extension of credit to be used solely for a commercial purpose or (8) any report used solely conveying a decision whether to guarantee a check in response to a request by a third party.

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

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

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

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

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

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

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

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

Section 1785.11.

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

SEC. 2. Section 1785.6 is added to the Civil Code, to read:

1785.6. The notices and disclosures to consumers provided for in this title shall be required to be made only to those consumers who have a mailing address in California.

SEC. 3. Section 1785.10 of the Civil Code is amended to read:

1785.10. (a) Every consumer credit reporting agency shall, upon request and proper identification of any consumer, allow the consumer to visually inspect all files maintained regarding that consumer at the time of the request.

(b) Every consumer reporting agency, upon contact by a consumer by phone, mail, or in person regarding information which may be contained in the agency files regarding that consumer, shall promptly advise the consumer of his or her rights under Sections 1785.19 and 1785.19.5, and of the obligation of the agency to provide disclosure of the files in person, by mail, or by telephone pursuant to Section 1785.15, including the obligation of the agency to provide a decoded written version of the file or a written copy of the file with an explanation of any code used, if the consumer so requests that copy. The disclosure shall be provided in the manner selected by the consumer, chosen from among any reasonable means available to the consumer credit reporting agency.

The agency shall determine the applicability of subdivision (1) of Section 1785.17 and, where applicable, the agency shall inform the consumer of the rights under that section.

(c) All information on a consumer in the files of a consumer credit reporting agency at the time of a request for inspection under subdivision (a), shall be available for inspection, including the names and addresses of the sources of information.

(d) The consumer credit reporting agency shall also disclose the recipients of any consumer credit report on the consumer which the consumer credit reporting agency has furnished:

(1) For employment purposes within the two-year period preceding the request.

(2) For any other purpose within the six-month period preceding the request.

Disclosure of recipients of consumer credit reports for purposes of this subdivision shall include the name of the recipient or, if applicable, the fictitious business name under which the recipient does business disclosed in full. If requested by the consumer, the identification shall also include the address of the recipient.

(e) The consumer credit reporting agency shall also disclose a record of all inquiries received by the agency in the six-month period preceding the request that identified the consumer in connection

with a credit transaction which is not initiated by the consumer. This record of inquiries shall include the name of each recipient making such an inquiry.

SEC. 4. Section 1785.11 of the Civil Code is amended to read:

1785.11. (a) A consumer credit reporting agency shall only furnish a consumer credit report under the following circumstances:

(1) In response to the order of a court having jurisdiction to issue such an order.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person whom it has reason to believe:

(A) Intends to use the information in connection with a credit transaction, or entering or enforcing an order of a court of competent jurisdiction for support, involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) Intends to use the information for employment purposes; or

(C) Intends to use the information in connection with the underwriting of insurance involving the consumer, or for insurance claims settlements; or

(D) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider the applicant's financial responsibility or status; or

(E) Intends to use the information in connection with the hiring of a dwelling unit, as defined in subdivision (c) of Section 1940; or

(F) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

(b) A consumer credit reporting agency may furnish information for purposes of a credit transaction specified in subparagraph (A) of paragraph (4), where it is a credit transaction that is not initiated by the consumer, only under the circumstances specified in paragraph (1) or (2), as follows:

(1) The consumer authorizes the consumer credit reporting agency to furnish the consumer credit report to the person.

(2) The proposed transaction involves a firm offer of credit to the consumer, the consumer credit reporting agency has complied with subdivision (c), and the consumer has not elected pursuant to paragraph (1) of subdivision (c) to have the consumer's name excluded from lists of names provided by the consumer credit reporting agency for purposes of reporting in connection with the potential issuance of firm offers of credit. A consumer credit reporting agency may provide only the following information pursuant to this paragraph:

(A) The name and address of the consumer.

(B) Information pertaining to a consumer which is not identified or identifiable with a particular consumer.

Except as provided in paragraph (2) of subdivision (a) of Section 1785.15, a consumer credit reporting agency shall not furnish to any

person a record of inquiries solely resulting from credit transactions that are not initiated by the consumer.

(c) (1) A consumer may elect to have his or her name and address excluded from any list provided by a consumer credit reporting agency pursuant to paragraph (2) of subdivision (b) by notifying the consumer credit reporting agency, by telephone or in writing, through the notification system maintained by the consumer credit reporting agency pursuant to subdivision (d), that the consumer does not consent to any use of consumer credit reports relating to the consumer in connection with any transaction that is not initiated by the consumer.

(2) An election of a consumer under paragraph (1) shall be effective with respect to a consumer credit reporting agency, and any affiliate of the consumer credit reporting agency, on the date on which the consumer notifies the consumer credit reporting agency.

(4) An election of a consumer under paragraph (1) shall terminate and be of no force or effect following notice from the consumer to the consumer credit reporting agency, through the system established pursuant to subdivision (d), that the election is no longer effective.

(d) Each consumer credit reporting agency which furnishes a prequalifying report pursuant to subdivision (b) in connection with a credit transaction not initiated by the consumer shall establish and maintain a notification system, including a toll-free telephone number, which permits any consumer, with appropriate identification and for which the consumer credit reporting agency has a file, to notify the consumer credit reporting agency of the consumer's election to have the consumer's name removed from any list of names and addresses provided by the consumer credit reporting agency, and by any affiliated consumer credit reporting agency, pursuant to paragraph (2) of subdivision (b). Compliance with the requirements of this subdivision by a consumer credit reporting agency shall constitute compliance with those requirements by any affiliate of that consumer credit reporting agency.

(e) Each consumer credit reporting agency which compiles and maintains files on consumers on a nationwide basis shall establish and maintain a notification system under paragraph (1) of subdivision (d) jointly with its affiliated consumer credit reporting agencies.

SEC. 5. Section 1785.13 of the Civil Code is amended to read:

1785.13. (a) No consumer credit reporting agency shall make any consumer credit report containing any of the following items of information:

(1) Bankruptcies which, from the date of adjudication, antedate the report by more than 10 years.

(2) Suits and judgments which, from the date of entry or renewal, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Unlawful detainer actions, unless the lessor was the prevailing

party. For purposes of this paragraph, the lessor shall be deemed to be the prevailing party only if (A) final judgment was awarded to the lessor (i) upon entry of the tenant's default, (ii) upon the granting of the lessor's motion for summary judgment, or (iii) following trial, or (B) the action was resolved by a written settlement agreement between the parties which states that the unlawful detainer action may be reported. In any other instance in which the action is resolved by settlement agreement, the lessor shall not be deemed to be the prevailing party for purposes of this paragraph.

(4) Paid tax liens which, from the date of payment, antedate the report by more than seven years.

(5) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(6) Records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime which, from the date of disposition, release, or parole, antedate the report by more than seven years. These items of information shall no longer be reported if at any time it is learned that in the case of a conviction a full pardon has been granted, or in the case of an arrest, indictment, information, or misdemeanor complaint a conviction did not result.

(7) Any other adverse information which antedates the report by more than seven years.

(b) The seven-year period specified in paragraphs (5) and (7) of subdivision (a) shall commence to run, with respect to any account which is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action. Where more than one of these actions is taken with respect to a particular account, the seven-year period specified in paragraphs (5) and (7) shall commence concurrently for all these actions on the date of the first of these actions.

(c) Any consumer credit reporting agency that furnishes a consumer credit report containing information regarding any case involving a consumer arising under the bankruptcy provisions of Title 11 of the United States Code shall include an identification of the chapter of Title 11 of the United States Code under which the case arose if that can be ascertained from what was provided to the consumer credit reporting agency by the source of the information.

(d) A consumer credit report shall not include any adverse information concerning a consumer antedating the report by more than 10 years or which otherwise is prohibited from being included in a consumer credit report.

(e) If a consumer credit reporting agency is notified by a furnisher of credit information that an open-end credit account of the consumer has been closed by the consumer, any consumer credit report thereafter issued by the consumer credit reporting agency with respect to that consumer, and which includes information

respecting that account, shall indicate the fact that the consumer has closed the account. For purposes of this subdivision, "open-end credit account" does not include any demand deposit account, such as a checking account, money market account, or share draft account.

(g) Consumer credit reporting agencies shall not include medical information in their files on consumers or furnish medical information for employment or credit purposes in a consumer credit report without the consent of the consumer.

(h) A consumer credit reporting agency shall include in any consumer credit report information, if any, on the failure of the consumer to pay overdue child or spousal support, where the information was either provided to the consumer credit reporting agency pursuant to Section 4752 or has been provided to the consumer credit reporting agency and verified by another federal, state, or local governmental agency.

SEC. 6. Section 1785.14 of the Civil Code is amended to read:

1785.14. (a) Every consumer credit reporting agency shall maintain reasonable procedures designed to avoid violations of Section 1785.13 and to limit furnishing of consumer credit reports to the purposes listed under Section 1785.11. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought and certify that the information will be used for no other purposes. From the effective date of this act the consumer credit reporting agency shall keep a record of the purposes as stated by the user. Every consumer credit reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer credit reporting agency may furnish a consumer credit report to any person unless it has reasonable grounds for believing that the consumer credit report will be used by such person for purposes listed in Section 1785.11.

(b) Whenever a consumer credit reporting agency prepares a consumer credit report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(c) No consumer credit reporting agency may prohibit any user of any consumer credit report furnished by the consumer credit reporting agency from disclosing the contents of the consumer credit report to the consumer who is the subject of the report if adverse action may be taken by the user based in whole or in part on the consumer credit report. The act of disclosure to the consumer by the user of the contents of a consumer credit report shall not be a basis for liability of the consumer credit reporting agency or the user under Section 1785.31.

(d) A consumer credit reporting agency shall provide a written notice to any person who regularly and in the ordinary course of business supplies information to the consumer credit reporting

agency concerning any consumer or to whom a consumer credit report is provided by the consumer credit reporting agency. The notice shall specify the person's obligations under this title. Copies of the appropriate code sections shall satisfy the requirement of this subdivision.

SEC. 7. Section 1785.16 of the Civil Code is amended to read:

1785.16. (a) If the completeness or accuracy of any item of information contained in his or her file is disputed by a consumer, and the dispute is conveyed directly to the consumer credit reporting agency by the consumer or user on behalf of the consumer, the consumer credit reporting agency shall within a reasonable period of time and without charge reinvestigate and record the current status of the disputed information before the end of the 30-business-day period beginning on the date the agency receives notice of the dispute from the consumer or user, unless the consumer credit reporting agency has reasonable grounds to believe and determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure of the consumer to provide sufficient information, as requested by the consumer credit reporting agency, to resolve the dispute. Unless the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, before the end of the five-business-day period beginning on the date the consumer credit reporting agency receives notice of dispute under this section, the agency shall notify any person who provided information in dispute at the address and in the manner specified by the person. A consumer credit reporting agency may require that disputes by consumers be in writing.

(b) In conducting such a reinvestigation the consumer credit reporting agency shall review and consider all relevant information submitted by the consumer with respect to the disputed item of information. If the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, it shall notify the consumer by mail or, if authorized by the consumer for that purpose, by any other means available to the consumer credit reporting agency, within five business days after that determination is made that it is terminating its reinvestigation of the item of information. In this notification, the consumer credit reporting agency shall state the specific reasons why it has determined that the consumer's dispute is frivolous or irrelevant. If a reinvestigation is made and, after reinvestigation, the disputed item of information is found to be missing, inaccurate, or can no longer be verified, the consumer credit reporting agency shall promptly add, correct, or delete that information from the consumer's file.

(c) No information may be reinserted in a consumer's file after having been deleted pursuant to this section unless the person who furnishes the information verifies that the information is accurate. If any information so deleted from a consumer's file is reinserted in the file, the consumer credit reporting agency shall promptly notify the consumer of the reinsertion in writing or, if authorized by the

consumer for that purpose, by any other means available to the consumer credit reporting agency. As part of, or in addition to, this notice the consumer credit reporting agency shall, within five business days of reinserting the information, provide the consumer in writing (1) a statement that the disputed information has been reinserted, (2) a notice that the agency will provide to the consumer, within 15 days following a request, the name, address, and telephone number of any furnisher of information contacted or which contacted the consumer credit reporting agency in connection with the reinsertion, (3) the toll-free telephone number of the consumer credit reporting agency that the consumer can use to obtain this name, address, and telephone number, and (4) a notice that the consumer has the right to add a statement to his or her file disputing the accuracy or completeness of the information.

(d) A consumer credit reporting agency shall provide notice to the consumer of the results of any reinvestigation under this subdivision, within five days of completion of the reinvestigation. The notice shall include (1) a statement that the reinvestigation is completed, (2) a consumer credit report that is based on the consumer's file as that file is revised as a result of the reinvestigation, (3) a description or indication of any changes made in the consumer credit report as a result of those revisions to the consumer's file, (4) a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the consumer credit reporting agency, including the name, business address, and telephone number of any furnisher of information contacted in connection with that information, (5) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information, and (6) a notice that the consumer has the right to request that the consumer credit reporting agency furnish notifications under subdivision (h). A consumer credit reporting agency shall provide the notice pursuant to this subdivision respecting the procedure used to determine the accuracy and completeness of information, not later than 15 days after receiving a request from the consumer.

(e) The presence of information in the consumer's file that contradicts the contention of the consumer shall not, in and of itself, constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(f) If the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, or if the reinvestigation does not resolve the dispute, or if the information is reinserted into the consumer's file pursuant to subdivision (c), the consumer may file a brief statement setting forth the nature of the dispute. The consumer credit reporting agency may limit these statements to not more than 100 words if it provides the consumer with assistance in writing a clear summary of the dispute.

(g) Whenever a statement of dispute is filed, the consumer credit

reporting agency shall, in any subsequent consumer credit report containing the information in question, clearly note that the information is disputed by the consumer and shall include in the report either the consumer's statement or a clear and accurate summary thereof.

(h) Following the deletion of information from a consumer's file pursuant to this section, or following the filing of a statement of dispute pursuant to subdivision (f), the consumer credit reporting agency shall, at the request of the consumer, furnish notification that the item of information has been deleted or that the item of information is disputed. In the case of disputed information, the notification shall include the statement or summary of the dispute filed pursuant to subdivision (f). This notification shall be furnished to any person, specifically designated by the consumer, who has, within two years prior to the deletion or the filing of the dispute, received a consumer credit report concerning the consumer for employment purposes, or who has, within six months of the deletion or the filing of the dispute, received a consumer credit report concerning the consumer for any other purpose, if these consumer credit reports contained the deleted or disputed information. The consumer credit reporting agency shall clearly and conspicuously disclose to the consumer his or her rights to make a request for this notification. The disclosure shall be made at or prior to the time the information is deleted pursuant to this section or the consumer's statement regarding the disputed information is received pursuant to subdivision (f).

(i) A consumer credit reporting agency shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file and in consumer credit reports of information that has been deleted pursuant to this section and not reinserted pursuant to subdivision (c).

(j) If the consumer's dispute is resolved by deletion of the disputed information within three business days, beginning with the day the consumer credit reporting agency receives notice of the dispute in accordance with subdivision (a), and provided that verification thereof is provided to the consumer in writing within five business days following the deletion, then the consumer credit reporting agency shall be exempt from requirements for further action under subdivisions (d), (f), and (g).

SEC. 8. Section 1785.25 of the Civil Code is amended to read:

1785.25. (a) A person shall not furnish information on a specific transaction or experience to any consumer credit reporting agency if the person knows or should know the information is incomplete or inaccurate.

(b) A person who (1) in the ordinary course of business regularly and on a routine basis furnishes information to one or more consumer credit reporting agencies about the person's own transactions or experiences with one or more consumers and (2) determines that information on a specific transaction or experience so provided to a

consumer credit reporting agency is not complete or accurate, shall promptly notify the consumer credit reporting agency of that determination and provide to the consumer credit reporting agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the consumer credit reporting agency complete and accurate.

(c) So long as the completeness or accuracy of any information on a specific transaction or experience furnished by any person to a consumer credit reporting agency is subject to a continuing dispute between the affected consumer and that person, the person may not furnish the information to any consumer credit reporting agency without also including a notice that the information is disputed by the consumer.

(d) A person who regularly furnishes information to a consumer credit reporting agency regarding a consumer who has an open-end credit account with that person, and which is closed by the consumer, shall notify the consumer credit reporting agency of the closure of that account by the consumer, in the information regularly furnished for the period in which the account is closed.

(e) A person who places a delinquent account for collection (internally or by referral to a third party), charges the delinquent account to profit or loss, or takes similar action, and subsequently furnishes information to a credit reporting agency regarding that action, shall include within the information furnished the approximate commencement date of the delinquency which gave rise to that action, unless that date was previously reported to the credit reporting agency. Nothing in this provision shall require that a delinquency must be reported to a credit reporting agency.

(f) Upon receiving notice of a dispute noticed pursuant to subdivision (a) of Section 1785.16 with regard to the completeness or accuracy of any information provided to a consumer credit reporting agency, the person that provided the information shall (1) complete an investigation with respect to the disputed information and report to the consumer credit reporting agency the results of that investigation before the end of the 30-business-day period beginning on the date the consumer credit reporting agency receives the notice of dispute from the consumer in accordance with subdivision (a) of Section 1785.16 and (2) review relevant information submitted to it.

(g) A person who furnishes information to a consumer credit reporting agency is liable for failure to comply with this section, unless the furnisher establishes by a preponderance of the evidence that, at the time of the failure to comply with this section, the furnisher maintained reasonable procedures to comply with those provisions.

SEC. 9. Section 1785.42 of the Civil Code is amended to read:

1785.42. (a) "Commercial credit report" means any report provided to a commercial enterprise for a legitimate business purpose, relating to the financial status or payment habits of a commercial enterprise which is the subject of the report. It does not

include a report subject to Title 1.6 (commencing with Section 1785.1), Title 1.6A (commencing with Section 1786), or a report prepared for commercial insurance underwriting, claims, or auditing purposes.

The term does not include (1) any report containing information related to transactions or experiences between the subject and the person making the report; (2) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (3) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to the subject conveys its decision with respect to that request.

(b) "Commercial credit reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, provides commercial credit reports to third parties.

(c) "Subject" means the commercial enterprise about which a commercial credit report has been compiled.

SEC. 10. Section 1789.16 of the Civil Code is amended to read:

1789.16. (a) A credit services organization shall not provide any service to a buyer except pursuant to a written contract that complies with this section. Every contract between the buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, shall be dated, signed by the buyer, and include all of the following:

(1) A conspicuous statement in size equal to at least 10-point boldface type, in immediate proximity to the space reserved for the signature of the buyer, as follows:

"You, the buyer, may cancel this contract at any time prior to midnight of the fifth day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right."

(2) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to some other person.

(3) A full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated date by which the services are to be performed, or the estimated length of time for performing the services not to exceed 90 days or a shorter period consistent with the purposes of this title as may be prescribed by the Department of Justice.

(4) The credit services organization's principal business address and the name and address of its agent, other than the Secretary of State, in the State of California, authorized to receive service of process.

(b) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract and easily detachable, and which shall contain in type of at least 10-point the following statement written in the same language as used in the contract:

"Notice of Cancellation"

"You may cancel this contract, without any penalty or obligation, within five days from the date the contract is signed.

"If you cancel, any payment made by you under this contract must be returned within 15 days following receipt by the seller of your cancellation notice.

"To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to

_____ at
(name of seller)

_____
(address of seller) (place of business)

not later than midnight _____.
(date)

"I hereby cancel this transaction."

_____ _____
(date) (purchaser's signature)

A copy of the fully completed contract and all other documents the credit services organization requires the buyer to sign shall be given to the buyer at the time they are signed.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for implementation of the changes made by this act concurrently with the operative date of Chapter 1194 of the Statutes of 1992 and to make needed changes in contract requirements for credit services organization contracts without delay, it is necessary that this act go into immediate effect.

CHAPTER 286

An act to add Sections 31768 and 31792 to the Government Code, relating to the County Employees Retirement Law of 1937.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 31768 is added to the Government Code, to read:

31768. Notwithstanding any other provision of this chapter to the contrary, the board may, by a resolution adopted, pursuant to both this section and Section 31792, by a majority vote and with respect only to persons who first become members on or after the effective

date of the resolution, elect to increase, by 33⅓ percent, the amounts payable pursuant to any one or more of Sections 31760.1, 31760.2, and 31765.1.

This section shall apply only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

SEC. 2. Section 31792 is added to the Government Code, to read:

31792. Notwithstanding any other provision of this chapter to the contrary, the board may, by a resolution adopted, pursuant to both this section and Section 31768, by a majority vote and with respect only to persons who first become members on or after the effective date of the resolution, act as follows:

(a) Elect to increase, by 33⅓ percent, the amounts payable pursuant to any one or more of Sections 31781.1, 31785, and 31785.1.

(b) Elect to decrease, by 20 percent, the amounts payable pursuant to any one or more of Sections 31786, 31786.1, and 31787.

This section shall apply only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

CHAPTER 287

An act to amend Sections 340, 340.1, and 340.2 of the Military and Veterans Code, relating to the state militia.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 340 of the Military and Veterans Code is amended to read:

340. (a) Subject to Section 340.1, whenever any officer, warrant officer, or enlisted member of the California National Guard, the organized militia, or the unorganized militia, when called into the active service of the state, pursuant to Sections 142, 143, or 146, is wounded, injured, disabled, or killed in the active service of the state in the line of duty, the member or the member's dependents shall receive compensation under Division 4 (commencing with Section 3201) of the Labor Code. For these purposes, the member is deemed to be an employee of the state. The compensation shall be based on the member's average income from all sources during the year immediately preceding the date of wounding, injury, or death or the commencement of disability and shall not exceed the maximum prescribed in Division 4 of the Labor Code.

(b) For the purposes of this article, any officer, warrant officer, or enlisted member performing military duty of any nature pursuant to Title 32 or Title 10 of the United States Code shall not be entitled to

benefits described in subdivision (a) or in Section 3401.1.

(c) Notwithstanding subdivision (a), any officer, warrant officer, or enlisted member on full-time active duty with the Office of the Adjutant General who suffers disability or death in the line of duty from either injury or disease is entitled to receive, from the state, benefits or compensation for that disability or death comparable to that provided to members of the United States armed forces on active duty.

SEC. 2. Section 340.1 of the Military and Veterans Code is amended to read:

340.1. (a) Any officer, warrant officer, or enlisted member of the California National Guard, the organized militia, or the unorganized militia, when called into the active service of the state, pursuant to Sections 142, 143, or 146, except an officer, warrant officer, or enlisted member on full-time duty with the Office of the Adjutant General, who is wounded, injured, or disabled in the active service of the state in the line of duty shall be retained on active duty and shall receive regular military pay and allowances for not to exceed 52 weeks from the date of wounding, injury, or disability, regardless of the date of expiration of the period of state active duty, unless any of the following occurs:

(1) The member becomes entitled to disability compensation through any private or other public employer.

(2) The member is able to return to his or her regular civilian employment, as determined by proper authority.

(3) The member requests an earlier release from active duty.

(b) A member who has received benefits under subdivision (a) and who is unable to return to his or her regular civilian employment following 52 weeks after the date of wounding, injury, or disability is entitled to compensation under Division 4 (commencing with Section 3201) of the Labor Code, pursuant to Section 340.

SEC. 3. Section 340.2 of the Military and Veterans Code is amended to read:

340.2. Any officer, warrant officer, or enlisted member of the California National Guard, the organized militia, or the unorganized militia, when called into the active service of the state, pursuant to Sections 142, 143, or 146, who, while in that active service, is transferred by the California National Guard or other military authority to any other state or local agency for purposes of fulfilling active service requirements pursuant to either a mutual aid agreement or an interagency agreement and is wounded, injured, or disabled in the line of duty, is entitled to the benefits provided under Section 340.1.

CHAPTER 288

An act to amend Section 17958.9 of, and to add Section 17922.3 to, the Health and Safety Code, relating to housing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 17922.3 is added to the Health and Safety Code, to read:

17922.3. Notwithstanding any other provision of law, a residential structure that is moved into, or within, the jurisdiction of a local agency or the department, shall not be treated, for the purposes of Section 104 of the 1991 Edition of the Uniform Building Code, as a new building or structure, but rather shall be treated, for the purposes of this part, as subject to Section 17958.9.

SEC. 2. Section 17958.9 of the Health and Safety Code is amended to read:

17958.9. Local ordinances or regulations governing the moving of apartment houses and dwellings shall, after July 1, 1978, permit the retention of existing materials and methods of construction so long as the apartment house or dwelling complies with the building standards for foundation applicable to new construction, and does not become or continue to be a substandard building.

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

In order to prevent the possible destruction of much-needed affordable housing, it is necessary that this act take effect immediately.

CHAPTER 289

An act to amend Sections 43600, 43601, 43602, 43604, and 43610 of, and to add Section 43022 to, the Public Resources Code, relating to solid waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 43022 is added to the Public Resources

Code, to read:

43022. (a) The open burning of solid waste, except for the infrequent burning of agricultural wastes, silvicultural wastes, landclearing debris, diseased trees, or debris from emergency cleanup operations, is prohibited at any solid waste facility.

(b) The owners and operators of solid waste facilities shall comply with subdivision (a) on and after the effective date of the federal regulations set forth in Subpart C (commencing with Section 258.20) of Part 258 of Title 40 of the Code of Federal Regulations.

SEC. 2. Section 43600 of the Public Resources Code is amended to read:

43600. (a) Any person owning or operating a solid waste landfill, as defined in Section 46027, shall, with the closure plan and postclosure maintenance plan submitted pursuant to subdivision (b) of Section 43501, submit to the board evidence of financial ability to provide for the cost of closure and postclosure maintenance, in an amount equal to the estimated cost of closure and 30 years of postclosure maintenance, contained in the closure plan and the postclosure maintenance plan submitted.

(b) Any person owning or operating a solid waste landfill shall comply with subdivision (a) on and after the effective date of the federal regulations set forth in Subpart G (commencing with Section 258.70) of Part 258 of Title 40 of the Code of Federal Regulations.

SEC. 3. Section 43601 of the Public Resources Code is amended to read:

43601. (a) The evidence of financial ability shall be sufficient to meet the closure and postclosure maintenance costs when needed.

(b) Owners and operators of solid waste landfills, as defined in Section 46027, shall provide evidence of financial ability through the use of any of the mechanisms set forth in Part 258 (commencing with Section 258.1) of Title 40 of the Code of Federal Regulations or through the use of any other mechanisms approved by the board. However, the board may adopt regulations which reasonably condition the use of one or more of those mechanisms to ensure adequate protection of public health and safety and the environment, but shall not exclude the use of any mechanism permitted under federal law.

SEC. 4. Section 43602 of the Public Resources Code is amended to read:

43602. (a) The evidence of financial ability required of an owner or operator of a solid waste landfill, as defined in Section 46027, shall be adjusted to equal the estimated costs of closure and 30 years of postclosure maintenance in the approved plans. Revisions in the plans prior to closure shall be accompanied by corresponding revisions in cost estimates and financial assurances.

(b) The owners and operators of solid waste landfills shall comply with subdivision (a) on and after the effective date of the federal regulations set forth in Subpart G (commencing with Section 258.70) of Part 258 of Title 40 of the Code of Federal Regulations.

SEC. 5. Section 43604 of the Public Resources Code is amended to read:

43604. (a) After closure, and during the postclosure maintenance period, an owner or operator of a solid waste landfill, as defined in Section 46027, shall maintain evidence of financial ability for postclosure maintenance at all times equal to the estimated cost of 30 years of postclosure maintenance, except that, 30 years before the end of the postclosure maintenance period specified in a postclosure maintenance plan approved by the board, an owner or operator may request approval from the board to provide evidence of financial ability in a lesser amount.

(b) Notwithstanding subdivision (a), the owner, operator, or other person authorized to conduct closure or postclosure maintenance may seek periodic reimbursement for closure or postclosure maintenance expenditures from money available in the trust fund or equivalent financial arrangement established pursuant to paragraph (2) of subdivision (a) of Section 43501. Requests for reimbursement shall be granted only if sufficient money remains available in the trust fund or equivalent financial arrangement to cover all remaining costs of closure and postclosure maintenance and if the person places evidence justifying and documenting the cost in the operating record of the solid waste landfill.

SEC. 6. Section 43610 of the Public Resources Code is amended to read:

43610. (a) Notwithstanding Article 3 (commencing with Section 43500) or this article, a small city which operates a solid waste landfill, as defined in Section 46027, in Kings County, that is operational and, as of January 1, 1991, has been granted all required permits, is not required to submit a postclosure maintenance plan or to provide a fund for postclosure maintenance pursuant to Article 3 (commencing with Section 43500) or this article, if all of the following conditions are met:

(1) The city has a population of less than 20,000 persons.

(2) The solid waste landfill receives less than 20,000 tons of waste per year.

(3) The water table of the highest aquifer under the solid waste landfill is 250 or more feet below the base of the solid waste landfill and the water in the highest aquifer is not potable.

(4) The solid waste landfill receives less than an average of 12 inches of rainfall per year.

(5) The solid waste landfill is closed in compliance with all state closure testing requirements at the time of closure.

(b) The exemption in subdivision (a) from the requirement to submit a postclosure maintenance plan shall become inoperative on the effective date of the federal regulations set forth in Subpart F (commencing with Section 258.60) of Part 258 of Title 40 of the Code of Federal Regulations, and the exemption in subdivision (a) from the requirement to provide a fund for postclosure maintenance shall become inoperative on the effective date of the federal regulations

set forth in Subpart G (commencing with Section 258.70) of Part 258 of Title 40 of the Code of Federal Regulations.

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

In order to prevent pollution from the open burning of wastes at solid waste facilities and so that state law regarding the closure and postclosure maintenance of solid waste landfills conform to federal law at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 290

An act to amend Section 23.5 of the Fresno Metropolitan Flood Control Act (Chapter 503 of the Statutes of 1955), relating to flood control, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 23.5 of the Fresno Metropolitan Flood Control Act (Chapter 503 of the Statutes of 1955) is amended to read:

Sec. 23.5. (a) The Legislature hereby finds and declares that a county may face substantial expense in maintaining a roll or system which reflects both current values of property for purpose of ad valorem assessments as provided by this act as well as the property values for general taxation mandated by Article XIII A of the California Constitution. The Legislature further finds and declares that a fair and proper assessment for district objects and purposes may be imposed on the alternative basis of the use to which the benefited land may be put and the services and benefits provided.

(b) The board of supervisors of the county and the board of directors of the district may evaluate the costs of maintaining a system to determine benefits according to assessed valuation of land and improvements thereon pursuant to Section 23 and the cost of determining benefits pursuant to use and services and benefits provided pursuant to this section. Pursuant to that determination, the board of supervisors and the board of directors may elect to impose an assessment as set forth in Section 23 or this section sufficient to raise the amount or amounts represented annually by the district.

(c) The assessment authorized to be imposed on each parcel under this section shall be based upon the parcel's proportionate benefit, taking into account the zone in which it is located, its size,

and its capacity for being put to use, with respect to all other parcels in the district. The aggregate of all the assessments shall no exceed the maximum limit set forth in Section 23, except as that limit is increased by the qualified voters of the district.

(d) Prior to July 10 of each year, the district shall transmit to the board of supervisors the zones of benefit and land use categories required to impose the assessment authorized by this section.

(e) Prior to March 1 of any year, landowners in the district may petition the board of directors to review, or the board of directors may elect to review on its own motion, the zones of benefit or land use categories determined by the district and submitted to the board of supervisors pursuant to this section. The petition shall be signed by at least 1 percent of the landowners within the district. The board of directors shall set a time and place for hearing upon the petition and shall give notice of the hearing by publishing the notice twice in a publication of general circulation at least 20 days prior to the hearing. The board of directors may, by resolution at the conclusion of the hearing, modify the zones of benefit or the land use categories as, in its judgment, is required and that modification shall become effective the next tax year, but in no event later than the next tax year following the next March 1.

(f) If the board of supervisors of the county and the board of directors of the district elect to use the alternative assessment basis provided in this section, the county and the district may recover their reasonable costs of preparing, imposing, and collecting the assessments. The district shall pay to the county from the proceeds of the assessments the county's portion of the costs.

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

In order to fulfill the Fresno Metropolitan Flood Control District's requirement to assess parcels within its boundaries for the proportional benefits those parcels receive, and impose those assessments in a timely manner, it is necessary that this act take effect immediately.

CHAPTER 291

An act to add Section 31680.7 to the Government Code, relating to public retirement systems.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 31680.7 is added to the Government Code, to read:

31680.7. (a) Notwithstanding any other provision of law, any person who has been retired for service may be reemployed by the county or district from which he or she has been retired. Upon reemployment, the member's retirement allowance shall be discontinued. The retirement allowance may be reinstated upon the discontinuance of reemployment, as specified in this section.

(b) (1) For purposes of this section, "original period of employment" means the period of service with the county or district upon which the member's original retirement allowance was based.

(2) For purposes of this section, "period of reemployment" means the service subsequently rendered by the member after he or she has been reemployed by the county or district.

(c) During the period of reemployment, the member shall accrue retirement service credit at the same tier or benefit level which was applicable to the member during his or her original period of employment. The member's contribution rate shall be based on the same age at entry, and the same statutory formula, which was used in calculating the member's contribution rate during his or her original period of employment.

(d) Upon termination of the member's period of reemployment for other than death or disability, the member shall begin receiving a monthly service retirement allowance which is the sum of all of the following:

(1) The monthly retirement allowance the member had been receiving immediately prior to the time the member was reemployed by the county or district.

(2) Any cost-of-living increases that would have been added to the monthly retirement allowance if the member's allowance had not been discontinued by reason of reemployment.

(A) A retirement allowance based on the amount of service credit the member accrued during the period of reemployment. This additional retirement allowance shall be calculated using the same benefit formula and tier upon which the member's original retirement allowance was calculated, but shall be based on the member's age upon termination of the period of reemployment and the member's final compensation during that period.

(B) The retirement allowance otherwise payable under this

section to a member whose allowance prior to reinstatement was paid pursuant to an election under Section 31810 shall be reduced as provided in that section. However, for a member reinstated pursuant to Section 31680.4 prior to attaining age 62, the reduction required by Section 31810 shall be the amount that is the actuarial value of the increase in the allowance from the date of retirement to the date of reinstatement.

(e) If, after reemployment pursuant to this section, the member becomes disabled and is granted a service-connected or non-service-connected disability retirement by the board, the member's disability retirement allowance shall be the greater of either of the following:

(1) The disability retirement allowance the member would have been entitled to receive if all of the member's service during his or her original period of employment and subsequent period of reemployment had been continuous.

(2) The service retirement allowance the member would have been entitled to receive if the member had not become disabled and had voluntarily terminated his or her period of reemployment.

(f) (1) If the member dies during his or her period of reemployment, and leaves an eligible survivor or survivors entitled to receive a survivor's allowance, the allowance shall be the same amount that it would have been if all of the member's service during his or her original period of employment and subsequent period of reemployment had been continuous. If a lump sum death benefit is payable to the member's designated beneficiary instead of a survivor's allowance, the member's accumulated retirement contributions for purposes of computing the death benefit shall be the sum of the contributions made by the member during the period of reemployment, plus interest credited thereon, and the excess, if any, of the member's total contributions during the original period of employment, including interest credited thereon, over the total amount of retirement benefits paid to the member between the member's original retirement from the county or district and the member's reemployment pursuant to this section.

(2) Upon or after service retirement, the continuance shall be paid upon the member's death to the respective elected beneficiaries from each of the separate retirement period elections.

(g) This section shall not apply to an employee who receives an additional retirement benefit as an inducement to retire early.

(h) This section shall not be operative in any county until the board of supervisors of that county, by resolution adopted by a majority vote, makes this section applicable in that county.

CHAPTER 292

An act to amend Section 9554 of, and to add Section 9554.5 to, the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 9554 of the Vehicle Code is amended to read:

9554. (a) The penalty shall be computed as provided in Sections 9406 and 9559 and shall be collected with the fee, except that the penalty for delinquency with respect to any transfer is ten dollars ($10) and applies only to the last transfer.

(b) A penalty shall be added on any application for renewal of registration made later than midnight of the date of expiration or on or after the date penalties become due. The penalty shall be computed after the registration and weight fees have been combined with the license fee specified in Section 10751 of the Revenue and Taxation Code, as follows:

(1) For a delinquency period of 10 days or less, the penalty is 10 percent of the fee.

(2) For a delinquency period of more than 10 days to and including 30 days, the penalty is 20 percent of the fee.

(3) For a delinquency period of more than 30 days to and including one year, the penalty is 60 percent of the fee.

(4) For a delinquency period of more than one year to and including two years, the penalty is 80 percent of the fee.

(5) For a delinquency period of more than two years, the penalty is 160 percent of the fee.

SEC. 2. Section 9554.5 is added to the Vehicle Code, to read:

9554.5. A penalty shall be added on any application for original registration made later than midnight of the date of expiration or on or after the date penalties become due. The penalty shall be computed after the registration and weight fees have been combined with the license fee specified in Section 10751 of the Revenue and Taxation Code, as follows:

(a) For a delinquency period of one year or less, the penalty is 40 percent of the fee.

(b) For a delinquency period of more than one year to and including two years, the penalty is 80 percent of the fee.

(c) For a delinquency period of more than two years, the penalty is 160 percent of the fee.

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

immediate effect. The facts constituting the necessity are:

In order to lessen the burden imposed on vehicle owners who are inadvertently a few days late in renewing the registration of their vehicles and are subject to excessive penalties, it is necessary that this act take effect immediately.

CHAPTER 293

An act to add Section 6103.6 to the Business and Professions Code, and to amend Sections 2101, 2583, 10804, 15642, 16062, 16064, and 17200 of, to add Sections 2645 and 15687 to, and to add Part 3.5 (commencing with Section 21350) to Division 11 of, the Probate Code, relating to fiduciaries.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 6103.6 is added to the Business and Professions Code, to read:

6103.6. Violation of Section 15687 of the Probate Code, or of Part 3.5 (commencing with Section 21350) of Division 11 of the Probate Code, shall be grounds for discipline. This section shall only apply to violations that occur on or after January 1, 1994.

SEC. 2. Section 2101 of the Probate Code is amended to read:

2101. The relationship of guardian and ward and of conservator and conservatee is a fiduciary relationship that is governed by the law of trusts, except as provided in this division.

SEC. 3. Section 2583 of the Probate Code is amended to read:

2583. In determining whether to authorize or require a proposed action under this article, the court shall take into consideration all the relevant circumstances, which may include but are not limited to:

(a) Whether the conservatee has legal capacity for the proposed transaction and, if not, the probability of the conservatee's recovery of legal capacity.

(b) The past donative declarations, practices, and conduct of the conservatee.

(c) The traits of the conservatee.

(d) The relationship and intimacy of the prospective donees with the conservatee, their standards of living, and the extent to which they would be natural objects of the conservatee's bounty by any objective test based on such relationship, intimacy, and standards of living.

(e) The wishes of the conservatee.

(f) Any known estate plan of the conservatee (including, but not limited to, the conservatee's will, any trust of which the conservatee is the settlor or beneficiary, any power of appointment created by or

exercisable by the conservatee, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee's death to another or others which the conservatee may have originated).

(g) The manner in which the estate would devolve upon the conservatee's death, giving consideration to the age and the mental and physical condition of the conservatee, the prospective devisees or heirs of the conservatee, and the prospective donees.

(h) The value, liquidity, and productiveness of the estate.

(i) The minimization of current or prospective income, estate, inheritance, or other taxes or expenses of administration.

(j) Changes of tax laws and other laws which would likely have motivated the conservatee to alter the conservatee's estate plan.

(k) The likelihood from all the circumstances that the conservatee as a reasonably prudent person would take the proposed action if the conservatee had the capacity to do so.

(*l*) Whether any beneficiary is a person described in paragraph (1) of subdivision (b) of Section 21350.

SEC. 4. Section 2645 is added to the Probate Code, to read:

2645. (a) No attorney who is a guardian or conservator shall receive any compensation from the guardianship or conservatorship estate for legal services performed for the guardian or conservator unless the court specifically approves the right to the compensation and finds that it is to the advantage, benefit, and best interests of the ward or conservatee.

(b) No parent, child, sibling, or spouse of a person who is a guardian or conservator, and no law partnership or corporation whose partner, shareholder, or employee is serving as a guardian or conservator shall receive any compensation for legal services performed for the guardian or conservator unless the court specifically approves the right to the compensation and finds that it is to the advantage, benefit, and best interests of the ward or conservatee.

(c) This section shall not apply if the guardian or conservator is related by blood or marriage to, or is a cohabitant with, the ward or conservatee.

(d) After full disclosure of the relationships of all persons to receive compensation for legal services under this section, the court may, in its discretion and at any time, approve the right to that compensation, including any time during the pendency of any of the following orders:

(1) An order appointing the guardian or conservator.

(2) An order approving the general plan under Section 1831.

(3) An order settling any account of the guardian or conservator.

(4) An order approving a separate petition, with notice given under Section 2581.

SEC. 5. Section 10804 of the Probate Code is amended to read:

10804. Notwithstanding any provision in the decedent's will, a personal representative who is an attorney may receive the personal

representative's compensation, but shall not receive compensation for services as the estate attorney unless the court specifically approves the right to the compensation in advance and finds that the arrangement is to the advantage, benefit, and best interests of the decedent's estate.

SEC. 6. Section 15642 of the Probate Code is amended to read:

15642. (a) A trustee may be removed in accordance with the trust instrument, by the court on its own motion, or on petition of a settlor, cotrustee, or beneficiary under Section 17200.

(b) The grounds for removal of a trustee by the court include the following:

(1) Where the trustee has committed a breach of the trust.

(2) Where the trustee is insolvent or otherwise unfit to administer the trust.

(3) Where hostility or lack of cooperation among cotrustees impairs the administration of the trust.

(4) Where the trustee fails or declines to act.

(5) Where the trustee's compensation is excessive under the circumstances.

(6) Where the sole trustee is a disqualified person, as defined in paragraph (1) of subdivision (b) of Section 21350, it shall be presumed that he or she shall be removed unless, based upon any evidence of the intent of the settlor and all other facts and circumstances, which shall be made known to the court, the court finds that it is fair, just, and equitable that the trustee continue to serve. Any waiver by the settlor of this provision is against public policy and shall be void. This subdivision shall not apply to instruments that become irrevocable on or before January 1, 1994.

(7) For other good cause.

(c) If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or temporary trustee. The court may also suspend the powers of the trustee to the extent the court deems necessary.

SEC. 6.3. Section 15687 is added to the Probate Code, to read:

15687. (a) Notwithstanding any provision of a trust to the contrary, a trustee who is an attorney may receive only (1) the trustee's compensation provided in the trust or otherwise provided in this article or (2) compensation for legal services performed for the trustee, unless the trustee obtains approval for the right to dual compensation as provided in subdivision (d).

(b) No parent, child, sibling, or spouse of a person who is a trustee, and no law partnership or corporation whose partner, shareholder, or employee is serving as a trustee shall receive any compensation for legal services performed for the trustee unless the trustee waives trustee compensation or unless the trustee obtains approval for the

right to dual compensation as provided in subdivision (d).

(c) This section shall not apply if the trustee is related by blood or marriage to, or is a cohabitant with, the settlor.

(d) After full disclosure of the nature of the compensation and relationship of the trustee to all persons receiving compensation under this section, the trustee may obtain approval for dual compensation by either of the following:

(1) An order pursuant to paragraph (21) of subdivision (b) of Section 17200.

(2) Giving 30 days' advance written notice to the persons entitled to notice under Section 17203. Within that 30-day period, any person entitled to notice may object to the proposed action by written notice to the trustee or by filing a petition pursuant to paragraph (21) of subdivision (b) of Section 17200. If the trustee receives any such objection, the trustee shall file a petition for approval pursuant to paragraph (21) of subdivision (b) of Section 17200.

(e) Any waiver of the requirements of this section is against public policy and shall be void.

(f) This section applies to services rendered on or after January 1, 1994.

SEC. 6.5. Section 16062 of the Probate Code is amended to read:

16062. (a) Except as otherwise provided in this section and in Section 16064, the trustee shall account at least annually, at the termination of the trust, and upon a change of trustees, to each beneficiary to whom income or principal is required or authorized in the trustee's discretion to be currently distributed.

(b) A trustee of a living trust created by an instrument executed before July 1, 1987, is not subject to the duty to account provided by subdivision (a).

(c) A trustee of a trust created by a will executed before July 1, 1987, is not subject to the duty to account provided by subdivision (a), except that if the trust is removed from continuing court jurisdiction pursuant to Article 2 (commencing with Section 17350) of Chapter 4 of Part 5, the duty to account provided by subdivision (a) applies to the trustee.

(d) Except as provided in Section 16064, the duty of a trustee to account pursuant to former Section 1120.1a of the Probate Code (as repealed by Chapter 820 of the Statutes of 1986), under a trust created by a will executed before July 1, 1977, which has been removed from continuing court jurisdiction pursuant to former Section 1120.1a, continues to apply after July 1, 1987. The duty to account under former Section 1120.1a may be satisfied by furnishing an account that satisfies the requirements of Section 16063.

(e) Any limitation or waiver in a trust instrument of the obligation to account is against public policy and shall be void as to any sole trustee who is a disqualified person as defined in paragraph (1) of subdivision (b) of Section 21350.

SEC. 6.7. Section 16064 of the Probate Code is amended to read:

16064. The trustee is not required to report information or

account to a beneficiary in any of the following circumstances:

(a) To the extent the trust instrument waives the report or account, except that no waiver described in subdivision (e) of Section 16062 shall be valid or enforceable. Regardless of a waiver of accounting in the trust instrument, upon a showing that it is reasonably likely that a material breach of the trust has occurred, the court may compel the trustee to report information about the trust and to account.

(b) In the case of a beneficiary of a revocable trust, as provided in Section 15800, for the period when the trust may be revoked.

(c) As to a beneficiary who has waived in writing the right to a report or account. A waiver of rights under this subdivision may be withdrawn in writing at any time as to the most recent account and future accounts. A waiver has no effect on the beneficiary's right to petition for a report or account pursuant to Section 17200.

(d) Where the beneficiary and the trustee are the same person.

SEC. 7. Section 17200 of the Probate Code is amended to read:

17200. (a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.

(b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

(1) Determining questions of construction of a trust instrument.

(2) Determining the existence or nonexistence of any immunity, power, privilege, duty, or right.

(3) Determining the validity of a trust provision.

(4) Ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument.

(5) Settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers.

(6) Instructing the trustee.

(7) Compelling the trustee to report information about the trust or account to the beneficiary, if (A) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary and (B) no report or account has been made within six months preceding the request.

(8) Granting powers to the trustee.

(9) Fixing or allowing payment of the trustee's compensation or reviewing the reasonableness of the trustee's compensation.

(10) Appointing or removing a trustee.

(11) Accepting the resignation of a trustee.

(12) Compelling redress of a breach of the trust by any available remedy.

(13) Approving or directing the modification or termination of the trust.

(14) Approving or directing the combination or division of trusts.

(15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service, in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest.

(16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction.

(17) Directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another.

(18) Approving removal of a testamentary trust from continuing court jurisdiction.

(19) Reforming or excusing compliance with the governing instrument of an organization pursuant to Section 16105.

(20) Determining the liability of the trust for any debts of a deceased settlor. However, nothing in this paragraph shall provide standing to bring an action concerning the internal affairs of the trust to a person whose only claim to the assets of the decedent is as a creditor.

(21) Determining petitions filed pursuant to Section 15687 and reviewing the reasonableness of compensation for legal services authorized under that section. In determining the reasonableness of compensation under this paragraph, the court may consider, together with all other relevant circumstances, whether prior approval was obtained pursuant to Section 15687.

SEC. 8. Part 3.5 (commencing with Section 21350) is added to Division 11 of the Probate Code, to read:

PART 3.5. LIMITATIONS ON TRANSFERS TO DRAFTERS AND OTHERS

21350. (a) Except as provided in Section 21351, no provision, or provisions, of any instrument shall be valid to make any donative transfer to any of the following:

(1) A person, including an attorney, conservator, or other person having a fiduciary relationship with the transferor, who drafted, transcribed, or caused to be drafted or transcribed, the instrument.

(2) A person who is related by blood or marriage to, is a cohabitant with, or is an employee of, the person who drafted, transcribed, or caused to be drafted or transcribed, the instrument.

(3) Any partner or shareholder of any partnership or corporation in which any person described in paragraph (1) or (2) has a 10 percent or greater ownership interest, and any employee of any such person, partnership, or corporation.

(b) For purposes of this part:

(1) "Disqualified person," means a person specified in paragraph (1), (2), or (3) of subdivision (a), but only in cases where Section

21351 does not apply.

(2) "Relative by blood or marriage" of a person means all of the following:

(A) The person's spouse or predeceased spouse.

(B) Relatives within the third degree of the person, of the person's spouse, and of any predeceased spouse of the person.

(C) The spouse of any person described in subparagraph (B).

In determining any relationship under this subdivision, Sections 6406, 6407, and 6408 shall be applicable.

21351. Section 21350 does not apply if any of the following conditions are met:

(a) The transferor is related by blood or marriage to, or is a cohabitant with, the person who drafted, transcribed, or caused to be drafted or transcribed, the instrument.

(b) The instrument is reviewed by an attorney not related to, or associated with, the drafter or the beneficiary of the transfer otherwise made invalid under Section 21350 who (1) counsels the client (transferor) about the nature of his or her intended transfer and (2) signs and delivers to the transferor and the drafter a certificate in substantially the following form:

"CERTIFICATE OF INDEPENDENT REVIEW

I, _____ , have reviewed
(attorney's name)
_____ and counseled my client,
(name of instrument)
_____ , on the nature of the transfer,
(name of client)
or transfers, of property contained in such instrument. On the basis of this counsel, I conclude that the transfer, or transfers, in such instrument that otherwise would be invalid under Section 21350 of the Probate Code are valid because such transfer, or transfers, are not the product of fraud, menace, duress, or undue influence."

_____ _____
(Name of Attorney) (Date)

(c) After full disclosure of the relationships of the persons involved, the instrument is approved pursuant to an order under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 of Division 4.

(d) The court determines, upon clear and convincing evidence, excluding the testimony of any person described in subdivision (a) of Section 21350, that (1) the transfer was not the product of fraud, menace, duress, or undue influence and (2) based upon all the facts and circumstances, which shall be made known to the court, the court finds that it is fair, just, and equitable to all interested persons to allow the transfer. If the court finds that the transfer was the product of fraud, menace, duress, or undue influence, the

disqualified person shall bear all costs of the proceeding, including attorney's fees.

(e) Subdivision (d) shall apply only to instruments executed on or before July 1, 1993.

21352. No person shall be liable for making any transfer pursuant to an instrument that is prohibited by this part unless that person has received actual notice of the possible invalidity of the transfer to the disqualified person under Section 21350 prior to making the transfer. A person who receives actual notice of the possible invalidity of a transfer prior to the transfer shall not be held liable for failing to make the transfer unless the validity of the transfer has been conclusively determined by a court.

21353. If a transfer fails under this part, the transfer shall be made as if the disqualified person predeceased the transferor without spouse or issue.

21354. This part applies notwithstanding a contrary provision in the instrument.

21355. This part shall apply to instruments that become irrevocable, or are executed by persons dying, on or after September 1, 1993.

CHAPTER 294

An act to amend Section 14503 of the Welfare and Institutions Code, relating to family planning.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

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

(a) In 1990, 66,260 cases of chlamydia were reported in California, making it one of the most common sexually transmitted diseases.

(b) Until recently, only expensive and difficult laboratory methods were available to detect chlamydia infection, leading to the common practice of treating, untested, women who showed clear clinical signs of infection.

(c) However, 70 percent of the women infected with chlamydia are asymptomatic, and thus, without testing, the majority of infections would be missed.

(d) With new and cheaper antibody-based methods for detecting infection, screening should be population-based rather than aimed at high-risk individuals, which still tends to miss about 10 percent of the infected population.

(e) An analysis based on data from clinics of the Office of Family Planning calculated that, by screening approximately 400,000 women

clients, 35,160 chlamydia infections a year would be eradicated, thereby preventing 8,379 cases of pelvic inflammatory disease, 1,005 surgical procedures for pelvic inflammatory disease, 335 ectopic pregnancies, and 1,760 cases of tubal infertility. In addition, 168 cases of neonatal pneumonia and 335 cases of neonatal conjunctivitis would be prevented in infants born to mothers with chlamydia. Over $63.8 million, calculated in 1986 dollars, would be saved in chlamydia-related medical care costs over the first five years.

(f) Screening for chlamydia infection among all women would also result in other benefits, including identification and treatment of sexual partners, prevention of chronic pelvic pain, an important sequel to chlamydia, and the stabilization or lowering of the overall prevalence of chlamydia, which has been rising with the increase in sexual activity among American women.

SEC. 2. Section 14503 of the Welfare and Institutions Code is amended to read:

14503. Family planning services shall be offered to all former, current, or potential recipients of childbearing age (as provided by Public Law 92-603) and provided to all such eligible individuals who voluntarily request the services. The services shall be offered and provided without regard to marital status, age, or parenthood. Notwithstanding any other provisions of law, the furnishing of these family planning services shall not require the consent of anyone other than the person who is to receive them. Within the meaning of this section, the term "former, current, or potential recipient" shall mean all persons eligible for Medi-Cal benefits under Chapter 7 (commencing with Section 14000) and all persons eligible for public social services for which federal reimbursement is available under the federal Social Security Act (42 U.S.C. Sec. 301 et seq.), except that the term "potential recipients" shall in all cases include all persons in a family where current social, economic and health conditions of the family indicate that the family would likely become a recipient of financial assistance within the next five years.

Family planning services shall include, but not be limited to:

(a) Medical treatment and procedures defined as family planning services under the published Medi-Cal scope of benefits.

(b) Medical contraceptive services such as diagnosis, treatment, supplies, and followup.

(c) Informational and educational services.

(d) Facilitating services such as transportation and child care services needed to attend clinic or other appointments.

(e) Screening for chlamydia.

To the extent the services under this section are not available under the Medi-Cal program, they shall be provided by contracts between authorized public or private agencies offering family planning services and the State Department of Health Services. These contracts shall include to the maximum extent possible, cooperative funding and other financial arrangements that permit maximum use of available federal funds. Information and referral

services only shall be available to all other families and children.

As the single state agency responsible for the state plan under Title XX of the federal Social Security Act (42 U.S.C. Sec. 1397 et seq.), the State Department of Social Services may provide family planning services pursuant to a purchase of services agreement with the State Department of Health Services from funds appropriated for those services. The agreement shall authorize the Office of Family Planning to implement a sliding fee schedule for family planning services provided to clients pursuant to Title XX of the federal Social Security Act in accordance with Section 14501.5.

CHAPTER 295

An act to amend Section 13963.1 of, to add Sections 13966.01, 13966.02, and 13969.3 to, and to repeal and add Section 13966 of, the Government Code, to amend Section 1463.007 of the Penal Code, and to amend Section 1095 of the Unemployment Insurance Code, relating to crime victims.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 13963.1 of the Government Code is amended to read:

13963.1. Notwithstanding Section 11123, the board may exclude from the hearing all persons other than board members and members of its staff, the victim, the victim's parents or guardians, the victim's representative, any witnesses, and other persons of the victim's choice to provide assistance to the victim during the hearing, if the application that the board is considering is the result of a crime against a minor, a crime of sexual assault, or a crime of domestic violence.

The board may not exclude persons from a hearing to which this section applies if the victim or the victim's representative requests that the hearing be open to the public.

SEC. 2. Section 13966 of the Government Code is repealed.

SEC. 3. Section 13966 is added to the Government Code, to read:

13966. (a) "Carrier" includes any insurer as defined in Section 23 of the Insurance Code, including any private company, corporation, mutual association, trust fund, reciprocal or interinsurance exchange authorized under the laws of this state to insure persons against liability for injuries caused to another, and also any insurer providing benefits under a policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance, or use of a motor vehicle which provides uninsured motorist endorsement or coverage, pursuant to Section 11580.2 of the Insurance Code.

(b) "Victim" means any person who has received assistance or will be provided assistance pursuant to this article. It includes the victim's guardian, conservator or other personal representative, estate, and survivors.

SEC. 4. Section 13966.01 is added to the Government Code, to read:

13966.01. (a) The State of California shall be subrogated to the rights of the victim to whom cash payments are granted to the extent of the cash payments granted. The subrogation rights shall be against the perpetrator of the crime or any person liable for the pecuniary loss.

(b) The state shall also be entitled to a lien on the judgment, award, or settlement in the amount of the cash payments on any recovery made by or on behalf of the victim. The state may recover this amount in a separate action, or may intervene in an action brought by or on behalf of the victim. If a claim is filed within one year of the date of recovery, the state shall pay 25 percent of the amount of the recovery that is subject to a lien on the judgment, award, or settlement, to the victim responsible for recovery thereof from the perpetrator of the crime, provided the total amount of the lien is recovered. The remaining 75 percent of the amount and any amount not claimed within one year pursuant to this section, shall be deposited in the Restitution Fund.

(c) The board may compromise or settle and release any lien pursuant to this article if it is found that the action is in the best interest of the state or the collection would cause undue hardship upon the victim.

(d) No judgment, award, or settlement in any action or claim by a victim to recover damages for injuries, where the state has an interest, shall be satisfied without first giving the board notice and a reasonable opportunity to perfect and satisfy the lien. The notice shall be given to the board in Sacramento except in cases where the board specifies that the notice shall be given otherwise. The notice shall include the complete terms of the award, settlement, or judgment and the name and address of any carrier directly or indirectly providing for the satisfaction.

(e) In the event that the victim, his or her guardian, personal representative, estate, or survivors, or any of them, bring an action or assert a claim for damages against the person or persons liable for the injury or death giving rise to an award by the board under this article, notice of institution of legal proceedings, notice of settlement, and all other notices required to be given to the judgment debtor pursuant to Chapters 1 (commencing with Section 681) and 2 (commencing with Section 714) of Title 9 of Part 2 of the Code of Civil Procedure, shall be given to the board in Sacramento except in cases where the board specifies that notice shall be given to the Attorney General. All notices shall be given by the attorney employed to bring the action for damages or by the victim, his or her guardian, personal representative, estate, or survivors, if no attorney

is employed. Notice shall include: the names of all parties to the claim or action; the address of all parties to the claim or action except for those persons represented by attorneys and in that case the name of the party and the name and address of the attorney; the nature of the claim asserted or action brought; in the case of actions before courts or administrative agencies the full title of the case including the identity of the court or agency, the names of the parties, and the case or docket number. When the victim or his or her attorney has reason to believe that a person from whom damages are sought is receiving a defense provided in whole or in part by a carrier, or is insured by a carrier for the injury caused to the victim, notice shall include statement of the fact and the name and address of the carrier. Upon request of the board a person obligated to provide notice shall provide the board with a copy of the current written claim or complaint.

(f) The state shall pay the county probation department or other county agency responsible for collection funds owed to the Restitution Fund under Section 13967, Section 1203.04 of the Penal Code, or Section 729.6 or 730.6 of the Welfare and Institutions Code, 10 percent of the funds so owed and collected by the county agency and deposited in the Restitution Fund. This payment shall be made only when the funds are deposited in the Restitution Fund within 45 days of the end of the month in which the funds are collected. Receiving 10 percent of the moneys collected as being owed to the Restitution Fund will be considered an incentive for collection efforts and should be used for furthering these collection efforts.

SEC. 5. Section 13966.02 is added to the Government Code, to read:

13966.02. In the event of judgment or award in a suit or claim against a third party or carrier, if the action or claim is prosecuted by the victim alone, the court or agency shall first order paid from any judgment or award the reasonable litigation expenses incurred in preparation and prosecution of the action or claim, together with reasonable attorney's fees when an attorney has been retained. After payment of the expenses and attorney's fees, the court or agency shall, on the application of the State Board of Control, allow as a lien against the amount of the judgment or award, the amount of the assistance granted by the board to the victim for losses sustained as a result of the same incident upon which the settlement, award, or judgment is based, as provided in Section 13966.01.

SEC. 6. Section 13969.3 is added to the Government Code, to read:

13969.3. A person who has been overpaid or on whose behalf any provider or other person has been overpaid under this chapter is liable for that amount unless:

(a) The overpayment was not due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient.

(b) The overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good

conscience.

For overpayments which are not in excess of two thousand dollars ($2,000), the board may authorize the executive officer to establish limits for the administration of this section. For overpayments which are in excess of two thousand dollars ($2,000), the board shall report to the Legislature in the manner prescribed by Section 13928 and the relief from liability described above shall be subject to legislative approval.

SEC. 7. Section 1463.007 of the Penal Code is amended to read:

1463.007. Notwithstanding any other provision of law, any county or court that implements or has implemented a comprehensive program to identify and collect fines and forfeitures which have not been paid after 60 days from the date on which they were due and payable, with or without warrant having been issued against the alleged violator, which are not being paid through time payments and for which the base fine excluding state and county penalties is at least one hundred dollars ($100), may deduct and deposit in the county treasury the cost of operating that program, from any revenues collected thereby prior to making any distribution of revenues to other governmental entities required by any other provision of law. For purposes of this section, a comprehensive collection program shall be a separate and distinct revenue collection activity and shall include at least 10 of the following components:

(a) Monthly bill statements to all debtors.

(b) Telephone contact with delinquent debtors to apprise them of their failure to meet payment obligations.

(c) Issuance of warning letters to advise delinquent debtors of an outstanding obligation.

(d) Requests for credit reports to assist in locating delinquent debtors.

(e) Access to Employment Development Department employment and wage information.

(f) The generation of monthly delinquent reports.

(g) Participation in the Franchise Tax Board's tax intercept program.

(h) The use of Department of Motor Vehicle information to locate delinquent debtors.

(i) The use of wage and bank account garnishments.

(j) The imposition of liens on real property and proceeds from the sale of real property held by a title company.

(k) The filing of objections to the inclusion of outstanding fines and forfeitures in bankruptcy proceedings.

(*l*) Coordination with the probation department to locate debtors who may be on formal or informal probation.

(m) The initiation of drivers' license suspension actions where appropriate.

(n) The capability to accept credit card payments.

A comprehensive collection plan shall also include a provision that

the county shall share any debt collection information acquired with state agencies entitled to proceeds of restitution fines and orders.

Any county that exercises the authority granted in this section for the purpose of enhancing its revenue collections shall file an annual report of its activities with the Legislature.

This section shall be repealed on June 30, 1994, unless a later enacted statute, which is enacted before June 30, 1994, deletes or extends that date.

SEC. 8. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes:

(a) To properly present a claim for benefits.

(b) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.

(c) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000). This subdivision, as it relates to Division 3 (commencing with Section 9000), applies only to subdivision (j) of this section.

(d) To enable an employer to receive a reduction in contribution rate.

(e) To enable the Director of Social Services or his or her representatives or the State Director of Health Services or his or her representatives, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to the Welfare and Institutions Code, and directly connected with, and limited to, the administration of public social services.

(f) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.

(g) To enable county district attorneys, or their representatives, to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(h) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(i) To enable county departments of collection or their representatives to determine entitlement to medical assistance services rendered pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code, and, when appropriate, to enable collection for the county's expenditures for these medical assistance services.

(j) To furnish an employer, or his or her authorized agent, with information including, but not limited to, the applicant's or recipient's name, social security number, address, employable skills, and job placement in order to enable him or her to fully discharge his or her obligations or safeguard his or her rights under the elements of a joint union, management, and Employment Development Department agreement as are deemed necessary to assist displaced workers to obtain new employment under the provisions of Chapter 2.9 (commencing with Section 9970) of Part 1 of Division 3 and related provisions of Division 3 (commencing with Section 9000). The information shall be limited to any information gathered under these divisions by the department and authorized for release by the labor organization which shall act as an agent for the affected workers under terms of the agreement and shall participate in defining the information release provisions.

(k) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code and designated by the head of the law enforcement agency and who requests this information in the course of and as a part of an investigation into the commission of a crime where there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency. Any officer or employee of the department who discloses information in violation of this subdivision is guilty of a misdemeanor. Any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

(1) This subdivision shall not be construed to authorize the release of a general list identifying individuals applying for or receiving benefits to any law enforcement agency.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be

protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(*l*) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(m) To provide the State Teachers' Retirement System, pursuant to Section 23910.3 of the Education Code, with information relating to the earnings of any person who is receiving a disability allowance from the State Teachers' Retirement System. The earnings information shall be released to the Teachers' Retirement Board only upon written request from the board specifying that the person is receiving a disability allowance from the system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(n) To provide the Public Employees' Retirement System, pursuant to Section 20143 of the Government Code, with information relating to the earnings of any person who is receiving a disability retirement allowance from the Public Employees' Retirement System. The earnings information shall be released to the Board of Administration of the system only upon written request from the board specifying that the person is receiving a disability retirement allowance from the system. The request may be made by the executive officer of the system or by an employee of the system so authorized and identified by name and title by the executive officer in writing.

(o) To provide the University of California Retirement System with information in its possession relating to the earnings of any person who has applied for or is receiving disability income from the system. The earnings information shall be disclosed only upon written request from the system specifying that the person has applied for or is receiving disability income from the system. The request may be made by the chief administrative officer of the system or by an employee so authorized and identified by name and title by the chief administrative officer in writing. The system shall notify applicants for and recipients of disability income that earnings information from the department's records will be released upon the system's request. The information obtained pursuant to this subdivision shall be used or disclosed by the system only to determine or to verify entitlement to, or continuing eligibility for, disability income. The system shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(p) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1

(commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code. The Division of Labor Standards Enforcement shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(q) To enable the federal Department of Health and Human Services, Office of Child Support Enforcement, Federal Parent Locator Service, to administer its child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(r) To provide county probation departments with wage and claim information in its possession that will assist those departments in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been, or can be recovered, and to assist in the collection of money owed to the county or the state by any person who has been directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law. Information provided about victims of crime shall be limited to data necessary to assist in locating them. The county shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision. Except as provided by Section 1463.007 of the Penal Code, any officer or employee of the department who discloses information in violation of this subdivision is guilty of a misdemeanor. Except as provided by Section 1463.007 of the Penal Code, any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

(s) To provide the Student Aid Commission with information concerning any individuals who are delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by the commission. The information obtained pursuant to this subdivision shall be utilized by the commission exclusively to enable the collection of defaulted loans and other funds owed, pursuant to the authority granted in Chapter 2 (commencing with Section 69500) of Part 42 of the Education Code and Chapter 1 (commencing with Section 30000) of Title 5 of the California Code of Regulations. The information released by the director for the purposes of this subdivision shall not include any employment, wage, or other information concerning any person who is receiving unemployment insurance benefits. The information shall be released to the commission only upon written request from the director of the commission or by an employee so authorized and identified by name and title by the director. The commission shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(t) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the extent permitted by federal law and regulations.

For the purposes of this subdivision, "authorized governmental agency" means the district attorney of any county, the office of the Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized governmental agency may disclose this information to the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body. The Department of Insurance or Department of Industrial Relations shall reimburse the department for all reasonable administrative expenses incurred relative to a request that it submits pursuant to this subdivision. Relevant information may include, but is not limited to, all of the following:

(1) Copies of unemployment and disability insurance application and claim forms and copies of any supporting medical records, documentation, and records pertaining thereto.

(2) Copies of returns filed by an employer pursuant to Section 1088 and copies of supporting documentation.

(3) Copies of benefit payment checks issued to claimants.

(4) Copies of any documentation that specifically identifies the claimant by social security number, residence address, or telephone number.

CHAPTER 296

An act to add and repeal Chapter 5.3 (commencing with Section 16525) of Part 4 of Division 9 of the Welfare and Institutions Code, relating to children, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. (a) The Legislature finds and declares that a demonstration project to provide services for children who are exposed to alcohol or drugs or who are HIV positive was implemented by the State Department of Social Services pursuant to Chapter 1385 of the Statutes of 1989, which was repealed on January 1, 1993.

(b) It is the intent of the Legislature that services provided under the demonstration project continue to be provided, to the greatest extent possible, without interruption. Therefore, this act shall be construed as a continuation and extension of the demonstration project implemented pursuant to Chapter 1385 of the Statutes of

1989.

SEC. 2. Chapter 5.3 (commencing with Section 16525) is added to Part 4 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 5.3. SERVICES FOR CHILDREN WHO ARE EXPOSED TO ALCOHOL OR DRUGS OR WHO ARE HIV POSITIVE

Article 1. General

16525. The definitions in this article shall control the interpretation of this chapter, unless the context requires otherwise.

16525.1. "Department" means the State Department of Social Services.

16525.2. "Eligible child" means any child who meets the requirements of subdivision (a) or (b), and subdivision (c).

(a) Any child who has a medically diagnosed condition or symptoms resulting from, or suspected as resulting from, substance abuse by the mother.

(b) Any child who is HIV positive.

(c) Any child who meets the requirements of either subdivision (a) or (b) and who meets all of the following requirements:

(1) The child is a dependent child of the court.

(2) The child is aged newborn to 36 months.

(3) The child is the child of a resident of an area served by a demonstration project pursuant to this chapter.

16525.3. "HIV" means human immunodeficiency virus.

16525.4. "HIV positive" means a condition of being medically diagnosed as infected with HIV.

16525.5. "Specialized in-home health care" means, but is not limited to, those services identified by the child's primary physician as appropriately administered by a foster parent, trained by health care professionals pursuant to the discharge plan of the facility releasing the child to his or her home.

Article 2. Demonstration Project Implementation

16525.10. (a) The department shall conduct the demonstration project described in Chapter 1385 of the Statutes of 1989, which shall conform to the requirements set forth in this chapter, and that shall be integrated with the foster care program authorized by Article 5 (commencing with Section 11400) of Chapter 2 of Part 3, and child welfare services programs authorized by Chapter 5 (commencing with Section 16500).

(b) (1) This demonstration project shall be conducted in four counties, as requested by each participating county, pursuant to procedures established by the department. The demonstration project in these counties, to be known as Phase I counties, shall continue until June 30, 1994, if funds are appropriated for that purpose in the Budget Act of 1993.

(2) Additional project sites, encompassing six counties, known as Phase II counties, implemented during the 1991–92 fiscal year, shall have their projects funded until August 31, 1994. Local assistance and state support costs for Phase II projects shall be provided to the department through an interagency reimbursement from the State Department of Alcohol and Drug Programs.

(c) In Phase I, the department shall conduct demonstration projects pursuant to this chapter in the County of Alameda, the County of Sacramento, and the County of San Diego, and with the County of Los Angeles, for the south central region and the harbor region of that county.

16525.11. Each participating county shall recruit foster families that shall be licensed as foster family homes and trained to care for children who are alcohol- or drug-exposed or who test HIV positive.

16525.13. (a) A participating county shall provide special training to recruited foster parents to care for eligible children and shall certify that the training has been provided.

(b) Participating counties may provide the same special training to relative caretakers of project-eligible children, if classroom space permits and the cost of providing the training does not exceed the county's allocation for project training.

16525.14. When a child is identified by a physician, medical team, county social worker, or placement source as a child who may be eligible for services under this chapter, the county shall determine if the child is eligible for placement pursuant to this chapter.

16525.15. (a) A participating county shall select a specialized foster family home for the child within the county in which the child's eligibility is established.

(b) If an eligible child's out-of-home placement changes from one participating county to another participating county, the child shall remain eligible for services under the demonstration project.

16525.17. (a) Participating counties shall prepare a child welfare services case plan pursuant to regulations adopted by the department and arrange nonmedical support services, including respite care for specially trained foster parents and relative caretakers.

(b) Each participating county shall monitor the foster home in accordance with applicable regulations governing the foster care and child welfare services programs authorized by Article 5 (commencing with Section 11400) of Part 3 and Chapter 5 (commencing with Section 16500).

16525.20. (a) The Legislature encourages participating counties to design and implement a range of respite options for specially trained foster parents and relative caretakers, from foster parent to foster parent cooperatives to more formal arrangements for services from subcontractors.

(b) No one who resides in the home with the eligible child shall receive payment for providing respite services for the eligible child or for any other child living in the home.

16525.25. The department shall do both of the following:

(a) Develop necessary procedures and standardized programs for a specialized foster home recruitment and training project that will establish foster care placements to care for eligible children.

(b) Coordinate sources of funding and services available to eligible children in order to maximize the social services provided to these children and avoid duplication of programs and funding.

16525.26. A participating county may contract for the provision of services under this chapter on a sole source basis.

16525.27. (a) (1) Each participating county shall submit written progress reports as required by the department.

(2) The progress report required by paragraph (1) shall include, but need not be limited to, all of the following data:

(A) An estimate of the number of children adjudicated dependents of the juvenile court under Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2 who are eligible children.

(B) The number of eligible children who are in all of the following:

(i) Foster family homes.

(ii) Group homes.

(iii) Homes of relative caretakers.

(iv) Certified foster family homes.

(C) The number of eligible children who are in specialized foster care placements during and at the termination of the demonstration project.

(D) The cost of providing training to foster parents in the care of eligible children.

(E) The cost of providing specialized care for eligible children.

(F) The cost of providing respite care services and the number of respite care hours each family received.

(b) (1) The department shall prepare a preliminary evaluation report on the effectiveness of the demonstration project by January 1, 1994, which shall be used as the basis for making a recommendation on the continued operation or expansion, or both, of the project.

(2) The department shall submit a final report to the Legislature on the overall effectiveness of the demonstration project by November 30, 1994.

16525.28. (a) The project established pursuant to this chapter shall be deemed to be successful if, by the end of the first year of the demonstration project, 25 percent of children adjudicated dependents of the juvenile court who require placement outside their own homes and who are alcohol- or drug-exposed or HIV positive are placed in licensed foster family homes or with relative caretakers in which the foster parents or relatives were recruited and trained pursuant to this chapter to care for, and to provide specialized in-home health care to, a child who is alcohol- or drug-exposed or HIV positive.

(b) The project shall be deemed to be successful if, by the end of

the demonstration project, 75 percent of the eligible children are placed in foster homes or with relative caretakers described in this chapter.

16525.29. Nothing in this chapter shall be construed to prevent children who are alcohol- or drug-exposed or HIV positive who have adoption as a case plan goal from receiving services under this chapter.

16525.30. (a) Notwithstanding any other provision of law, including, but not limited to, Sections 1250, 1251, 1254, 1270, 1501, 1502, 1505, 1507, 1521, 1530.6, and 11002, subdivision (c) of Section 1550, and subdivision (a) of Section 11154 of the Health and Safety Code, and Sections 2052, 2725, 2732, and 2795 of the Business and Professions Code, subdivisions (b) and (c) shall control the placement of a child pursuant to this chapter.

(b) A county may place children who are alcohol- or drug-exposed or HIV positive in foster family homes pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code.

(c) If a county makes a placement pursuant to subdivision (b), a foster parent trained by health care professionals pursuant to the discharge plan of the facility releasing the child may provide specialized in-home health care to that foster child.

Article 3. Duration of Chapter

16525.40. This chapter shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that date.

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

In order that alcohol- or drug-exposed and HIV positive children may continue to receive needed services on an uninterrupted basis, it is necessary that this act take effect immediately.

CHAPTER 297

An act to amend Section 12021 of the Penal Code, relating to firearms.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 12021 of the Penal Code is amended to read:

12021. (a) Any person who has been convicted of a felony under

the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

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

(2) Any person, whose continued employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction prior to the effective date of the amendments which added this paragraph to this section, at any time until January 1, 1993, may petition the court for relief from this prohibition. The court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate. In making its decision, the court may consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature in enacting this paragraph to permit persons who were convicted of an offense specified in this subdivision prior to the effective date of the amendments which added this paragraph to this section to seek relief from the prohibition imposed by this subdivision.

(d) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her

possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or an offense described in subdivision (b) of Section 1203.073, (2) is found to be a fit and proper subject to be dealt with under the juvenile court law, and (3) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or an offense described in subdivision (b) of Section 1203.073 shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a restraining order issued pursuant to Division 10 (commencing with Section 5500) of the Family Code and predicated on subdivision (b), (c), or (d) of Section 2035 of the Family Code, is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or

attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 5516 of the Family Code. However, this subdivision does not apply if the firearm is received as part of the disposition of community property pursuant to Division 7 (commencing with Section 2500) of the Family Code.

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

CHAPTER 298

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

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony

conviction.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) of subdivision (a) of Section 261.

(4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(6) Lewd acts on a child under the age of 14 years as defined in Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5 or 12022.55.

(9) Any robbery perpetrated in an inhabited dwelling house, vessel, as defined in Section 21 of the Harbors and Navigation Code, which is inhabited and designed for habitation, inhabited trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(10) Arson in violation of subdivision (a) of Section 451.

(11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(12) Attempted murder.

(13) A violation of Section 12308.

(14) Kidnapping in violation of subdivision (b) of Section 207.

(15) Kidnapping, as punished in subdivision (b) of Section 208.

(16) Continuous sexual abuse of a child in violation of Section 288.5.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for such extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official

discharge from custody or until release on parole whichever first occurs including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 2. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) of subdivision (a) of Section 261.

(4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(6) Lewd acts on a child under the age of 14 years as defined in Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5 or 12022.55.

(9) Any robbery perpetrated in an inhabited dwelling house, or vessel as defined in Section 21 of the Harbors and Navigation Code which is inhabited and designed for habitation, an inhabited floating home as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, an inhabited trailer coach as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it

is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(10) Arson in violation of subdivision (a) of Section 451.

(11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(12) Attempted murder.

(13) A violation of Section 12308.

(14) Kidnapping in violation of subdivision (b) of Section 207.

(15) Kidnapping, as punished in subdivision (b) of Section 208.

(16) Continuous sexual abuse of a child in violation of Section 288.5.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for such extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole whichever first occurs including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the

jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 3. Section 2 of this bill incorporates amendments to Section 667.5 of the Penal Code proposed by both this bill and AB 112. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 667.5 of the Penal Code, and (3) this bill is enacted after AB 112, in which case Section 1 of this bill shall not become operative.

CHAPTER 299

An act to amend Sections 667.7 and 12022.3 of the Penal Code, relating to crimes.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 667.7 of the Penal Code is amended to read:

667.7. (a) Any person convicted of a felony in which the person inflicted great bodily injury as provided in Section 12022.7, or personally used force which was likely to produce great bodily injury, who has served two or more prior separate prison terms as defined in Section 667.5 for the crime of murder; attempted murder; voluntary manslaughter; mayhem; rape by force, violence, or fear of immediate and unlawful bodily injury on the victim or another person; oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another

person; lewd acts on a child under the age of 14 years by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; a violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; kidnapping as punished in subdivision (d) of Section 208, or for ransom, extortion, or robbery; robbery involving the use of force or a deadly weapon; assault with intent to commit murder; assault with a deadly weapon; assault with a force likely to produce great bodily injury; assault with intent to commit rape, sodomy, oral copulation, penetration of a vaginal or anal opening in violation of Section 289, or lewd and lascivious acts on a child; arson of a structure; escape or attempted escape by an inmate with force or violence in violation of subdivision (a) of Section 4530, or of Section 4532; exploding a device with intent to murder in violation of Section 12308; exploding a destructive device which causes bodily injury in violation of Section 12309, or mayhem or great bodily injury in violation of Section 12310; exploding a destructive device with intent to injure, intimidate, or terrify, in violation of Section 12303.3; any felony in which the person inflicted great bodily injury as provided in Section 12022.7; or any felony punishable by death or life imprisonment with or without the possibility of parole is a habitual offender and shall be punished as follows:

(1) A person who served two prior separate prison terms shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 20 years, or the term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046, whichever is greatest. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but the person shall not otherwise be released on parole prior to that time.

(2) Any person convicted of such a felony who has served three or more prior separate prison terms, as defined in Section 667.5, for the crimes specified in subdivision (a) of this section shall be punished by imprisonment in the state prison for life without the possibility of parole.

(b) This section shall not prevent the imposition of the punishment of death or imprisonment for life without the possibility of parole. No prior prison term shall be used for this determination which was served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. As used in this section, a commitment to the Department of the Youth Authority after conviction for a felony shall constitute a prior prison term. The term imposed under this section shall be imposed only if the prior prison

terms are alleged under this section in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.

SEC. 2. Section 12022.3 of the Penal Code is amended to read:

12022.3. For each violation of Section 261, 262, 264.1, 286, 288, 288a, or 289, and in addition to the sentence provided, any person shall receive the following:

(a) A three-, four-, or five-year enhancement if the person uses a firearm or a deadly weapon in the commission of the violation.

(b) A one-, two-, or three-year enhancement if the person is armed with a firearm or a deadly weapon. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

SEC. 3. It is the intent of the Legislature that Section 2 of this act codifies the holding in People v. Steele, 235 Cal. App. 3d 788, that for the purposes of Section 12022.3 of the Penal Code, "firearm" includes any firearm, whether loaded or unloaded, with the result that the enhancements specified in Section 12022.3 of the Penal Code apply to both loaded and unloaded firearms.

CHAPTER 300

An act to amend Section 731.7 of the Welfare and Institutions Code, relating to minors, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 30, 1993. Filed with Secretary of State August 2, 1993.]

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

SECTION 1. Section 731.7 of the Welfare and Institutions Code is amended to read:

731.7. (a) A ward shall be eligible for participation in the LEAD program of the Department of the Youth Authority established by Section 731.6 if the ward meets all of the following criteria:

(1) The ward has been committed to the department by the juvenile court after a finding of wardship under Section 602 and has not previously been placed in the LEAD program.

(2) The ward is committed to the Department of the Youth Authority on the basis of an offense or parole violation which does not, in the opinion of the department, involve serious violence or serious bodily injury.

(3) The ward is at least 14 years of age.

(4) The ward has been involved with substance abuse or is

identified by the department as an addictive personality or as a person at risk of future substance abuse.

(5) The ward has been examined by the department and has received medical clearance for participation in a program involving strenuous physical activity.

(6) The ward consents to participation in the program after being fully informed of the purpose, nature, and activities of the program, including a clear explanation of the prospective benefit of reduced institutional stay and of the consequences of failing the program.

(b) A prerequisite to the enrollment and participation of any ward in the LEAD program shall be the approval of the Youthful Offender Parole Board, with full consideration of the recommendation of the Department of the Youth Authority. The board shall cooperate with the department by acting in a timely manner, not to exceed 15 days, on departmental recommendations for enrollment in the LEAD program and by making a good faith effort to keep all available pilot program slots filled with qualified wards.

(c) The judge of the juvenile court may, when ordering commitment of a juvenile to the Department of the Youth Authority, recommend that the juvenile be assigned to the LEAD program. The recommendation shall be stated in the court's dispositional order and shall be communicated to the department in any manner that the department shall deem appropriate. This recommendation shall be taken into consideration by the department and by the Youthful Offender Parole Board when selecting wards for participation in the LEAD program. The department shall keep track of the judicial recommendations for program participation and their final disposition by the department and by the Youthful Offender Parole Board. Upon the request of a juvenile court judge who has recommended that a ward be entered into the program, the department shall inform the requesting judge of the ward's status with regard to entry or denial of entry into the program and removal from or completion of the program.

(d) This section shall be repealed on June 30, 1997, unless that date is extended or deleted by a later enacted statute.

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

In order to ensure the full implementation of the LEAD program and the viability of this important project, and in order to enhance the treatment options for youths committed to the Department of the Youth Authority, it is necessary that this act take effect immediately.

CHAPTER 301

An act to amend Sections 3190 and 5754 of, and to add Section 7712 to, the Family Code, relating to court orders.

[Approved by Governor August 13, 1993. Filed with Secretary of State August 16, 1993.]

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

SECTION 1. Section 3190 of the Family Code is amended to read:

3190. (a) In a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, where custody of, or visitation with, a minor child is at issue, the court may require the parents of the child who are involved in the custody or visitation dispute, and the minor child, to participate in outpatient counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, including, but not limited to, mental health or substance abuse services, for not more than one year, provided that the program selected has counseling available for the designated period of time, if the court finds both of the following:

(1) The dispute between the parents or between a parent and the child poses a substantial danger to the best interest of the child.

(2) The counseling is in the best interest of the child.

(b) Where there has been a history of abuse by either parent against the child or by one parent against the other parent, and a protective order is in effect, the court may order the parties to participate in counseling separately and at separate times. Each party shall bear the cost of his or her own counseling separately, unless good cause is shown for a different apportionment. The costs associated with a minor child participating in counseling shall be apportioned in accordance with Section 4064.

(c) The court, in its finding, shall set forth reasons why it has found both of the following:

(1) The dispute poses a substantial danger to the best interest of the child and the counseling is in the best interest of the child.

(2) The financial burden created by the court order for counseling does not otherwise jeopardize a party's other financial obligations.

(d) The court shall not order the parties to return to court upon the completion of counseling. Either party may file a new order to show cause or motion after counseling has been completed, and the court may again order counseling consistent with this chapter.

SEC. 2. Section 5754 of the Family Code is amended to read:

5754. (a) The court may issue, after notice and a hearing, an order requiring any party to participate in counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, including, but not

limited to, mental health or substance abuse services, where it is shown that the parties intend to continue to reside in the same household or have continued to reside in the same household after previous instances of domestic violence.

(b) Where there has been a history of domestic violence between the parties and a protective order is in effect, at the request of the party protected by the order, the parties shall participate in counseling separately and at separate times. The court may also order a restrained party to participate in batterer's treatment counseling for up to one year, provided that the program selected has counseling available for the designated period of time.

(c) Each party shall bear the cost of his or her own counseling separately, unless good cause appears for a different apportionment.

SEC. 3. Section 7712 is added to the Family Code, to read:

7712. (a) Where there has been a history of domestic violence between the parties and a protective order is in effect, at the request of the party protected by the order the court may order the parties to participate in counseling separately and at separate times. The court may also order a restrained party to participate in batterer's treatment counseling for up to one year, provided that the program selected has counseling available for the designated period of time.

(b) Each party shall bear the cost of his or her own counseling separately, unless good cause appears for a different apportionment.

CHAPTER 302

An act to amend Section 832.2 of the Penal Code, relating to peace officers.

[Approved by Governor August 25, 1993. Filed with Secretary of State August 26, 1993.]

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

SECTION 1. Section 832.2 of the Penal Code is amended to read:

832.2. (a) It is the intent of the Legislature to ensure the safety of students, staff, and the public on or about California's public schools, by providing school peace officers with training that will enable them to deal with the increasingly diverse and dangerous situations they encounter.

(b) Every school peace officer, as described in Sections 39670 and 72330 of the Education Code, shall complete a course of training approved by the Commission on Peace Officer Standards and Training relating directly to the role of school peace officers. Any person employed as a school peace officer prior to the date that the Commission on Peace Officer Standards and Training approves the course of training shall complete the course of instruction by January 1, 1996. Any person who is not employed as a school peace officer

until on or after the date that the Commission on Peace Officer Standards and Training approves the course of training shall complete the course of instruction within one year from the date his or her employment commences.

The school peace officer training course shall address guidelines and procedures for reporting offenses to other law enforcement agencies that deal with violence on campus and other school related matters, as determined by the Commission on Peace Officer Standards and Training. The Commission on Peace Officer Standards and Training shall develop and approve the course of training no later than January 1, 1991, and shall consult with school peace officers regarding the content and hourly requirement for this course.

(c) This section does not apply to any school peace officer whose employer requires its school peace officers to possess the basic certificate that is awarded by the Commission on Peace Officer Standards and Training or any school peace officer who possess the basic certificate that is awarded by the Commission on Peace Officers Standards and Training.

CHAPTER 303

An act to amend Section 1354 of the Civil Code, relating to common interest developments.

[Approved by Governor August 25, 1993. Filed with Secretary of State August 26, 1993.]

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

SECTION 1. Section 1354 of the Civil Code is amended to read:

1354. (a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

(b) Unless the applicable time limitation for commencing the action would run within 120 days, prior to the filing of a civil action by either an association or an owner or a member of a common interest development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than association assessments, not in excess of five thousand dollars ($5,000), related to the enforcement of the governing documents, the parties shall endeavor, as provided in this subdivision, to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration. The form of alternative dispute resolution chosen may be binding or nonbinding

at the option of the parties. Any party to such a dispute may initiate this process by serving on another party to the dispute a Request for Resolution. The Request for Resolution shall include (1) a brief description of the dispute between the parties, (2) a request for alternative dispute resolution, and (3) a notice that the party receiving the Request for Resolution is required to respond thereto within 30 days of receipt or it will be deemed rejected. Service of the Request for Resolution shall be in the same manner as prescribed for service in a small claims action as provided in Section 116.340 of the Code of Civil Procedure. Parties receiving a Request for Resolution shall have 30 days following service of the Request for Resolution to accept or reject alternative dispute resolution and, if not accepted within the 30-day period by a party, shall be deemed rejected by that party. If alternative dispute resolution is accepted by the party upon whom the Request for Resolution is served, the alternative dispute resolution shall be completed within 90 days of receipt of the acceptance by the party initiating the Request for Resolution, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by the parties.

(c) At the time of filing a civil action by either an association or an owner or a member of a common interest development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than association assessments, not in excess of five thousand dollars ($5,000), related to the enforcement of the governing documents, the party filing the action shall file with the complaint a certificate stating that alternative dispute resolution has been completed in compliance with subdivision (b). The failure to file a certificate as required by subdivision (b) shall be grounds for a demurrer pursuant to Section 430.10 of the Code of Civil Procedure or a motion to strike pursuant to Section 435 of the Code of Civil Procedure unless the filing party certifies in writing that one of the other parties to the dispute refused alternative dispute resolution prior to the filing of the complaint, that preliminary or temporary injunctive relief is necessary, or that alternative dispute resolution is not required by subdivision (b), because the limitation period for bringing the action would have run within the 120-day period next following the filing of the action, or the court finds that dismissal of the action for failure to comply with subdivision (b) would result in substantial prejudice to one of the parties.

(d) Once a civil action specified in subdivision (a) to enforce the governing documents has been filed by either an association or an owner or member of a common interest development, upon written stipulation of the parties the matter may be referred to alternative dispute resolution and stayed. The costs of the alternative dispute resolution shall be borne by the parties. During this referral, the action shall not be subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

(e) The requirements of subdivisions (b) and (c) shall not apply

to the filing of a cross-complaint.

(f) In any action specified in subdivision (a) to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs. Upon motion by any party for attorney's fees and costs to be awarded to the prevailing party in these actions, the court, in determining the amount of the award, may consider a party's refusal to participate in alternative dispute resolution prior to the filing of the action.

(g) Unless consented to by both parties to alternative dispute resolution that is initiated by a Request for Resolution under subdivision (b), evidence of anything said or of admissions made in the course of the alternative dispute resolution process shall not be admissible in evidence, and testimony or disclosure of such a statement or admission may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(h) Unless consented to by both parties to alternative dispute resolution that is initiated by a Request for Resolution under subdivision (b), documents prepared for the purpose or in the course of, or pursuant to, the alternative dispute resolution shall not be admissible in evidence, and disclosure of these documents may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(i) Members of the association shall annually be provided a summary of the provisions of this section, which specifically references this section. The summary shall include the following language:

"Failure by any member of the association to comply with the prefiling requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents."

The summary shall be provided either at the time the pro forma budget required by Section 1365 is distributed or in the manner specified in Section 5016 of the Corporations Code.

(j) Any Request for Resolution sent to the owner of a separate interest pursuant to subdivision (b) shall include a copy of this section.

CHAPTER 304

An act to amend Section 655.5 of the Business and Professions Code, relating to clinical laboratory tests, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 25, 1993. Filed with Secretary of State August 26, 1993.]

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

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

(a) Current law requires hospitals and other health care providers that bill for outside clinical laboratory services to provide notice of the name, address, and charge of the outside laboratory on initial and subsequent bills.

(b) Hospitals and other health care providers cannot comply with the notice requirement when the billing forms used by insurance carriers, Medicare, and Medi-Cal are summary bills, requiring a summary entry for all clinical laboratory charges and are standardized forms.

(c) In order to allow hospitals and other health care providers to bill for services and comply with the law, the notice requirement should only be applied when the standardized billing form includes adequate space to provide the name, address, and charge of the outside laboratory.

(d) The changes made by this act are technical in nature and are not intended to affect the current prohibition against marking-up charges for clinical laboratory services that are not actually rendered by the hospital or other health care provider.

SEC. 2. Section 655.5 of the Business and Professions Code is amended to read:

655.5. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division, or any clinical laboratory, or any health facility when billing for a clinical laboratory of the facility, to charge, bill, or otherwise solicit payment from any patient, client, or customer for any clinical laboratory service not actually rendered by such person or clinical laboratory or under his or her or its direct supervision unless the patient, client, or customer is apprised at the first time of the charge, billing, or solicitation of the name, address, and charges of the clinical laboratory performing the service. The first such written charge, bill, or other solicitation of payment shall separately set forth the name, address, and charges of the clinical laboratory concerned and shall clearly show whether or not such charge is included in the total of the account, bill, or charge. This subdivision shall not apply to a clinical laboratory of a health facility or a health facility when billing for a clinical laboratory of the facility nor to a person licensed under

this division or under any initiative act referred to in this division, if the standardized billing form used by the facility or person requires a summary entry for all clinical laboratory charges. For purposes of this subdivision, "health facility" has the same meaning as defined in Section 1250 of the Health and Safety Code.

(b) It is also unlawful for any person licensed under this division or under any initiative act referred to in this division to charge additional charges for any clinical laboratory service that is not actually rendered by the licensee to the patient and itemized in the charge, bill, or other solicitation of payment. This section shall not be construed to prohibit any of the following:

(1) Any itemized charge for any service actually rendered to the patient by the licensee.

(2) Any summary charge for services actually rendered to a patient by a health facility, as defined in Section 1250 of the Health and Safety Code, or by a person licensed under this division or under any initiative act referred to in this division if the standardized billing form used by the facility or person requires a summary entry for all clinical laboratory charges.

(c) This section shall not apply to any person or clinical laboratory who or which contracts directly with a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, if such services are to be provided to members of the plan on a prepaid basis and without additional charge or liability on account thereof.

(d) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both such imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison.

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

Chapter 85 of the Statutes of 1992 contained provisions, which should have been corrected during the consideration of the measure, that will cause added cost to the health care system and that will be corrected by this act so that the public can receive the benefits of Chapter 85 of the Statutes of 1992 without the unnecessary cost increases.

CHAPTER 305

An act to amend Section 11380.1 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor August 25, 1993. Filed with Secretary of State August 26, 1993.]

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

SECTION 1. Section 11380.1 of the Health and Safety Code is amended to read:

11380.1. (a) Notwithstanding any other provision of law, any person 18 years of age or over who is convicted of a violation of Section 11380, in addition to the punishment imposed for that conviction, shall receive an additional punishment as follows:

(1) If the offense involved phencyclidine (PCP), methamphetamine, lysergic acid diethylamide (LSD), or any analog of these substances and occurred upon the grounds of, or within, a church or synagogue, a playground, a public or private youth center, or a public swimming pool, during hours in which the facility is open for business, classes, or school-related programs, or at any time when minors are using the facility, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for one year.

(2) If the offense involved phencyclidine (PCP), methamphetamine, lysergic acid diethylamide (LSD), or any analog of these substances and occurred upon, or within 1,000 feet of, the grounds of any public or private elementary, vocational, junior high school, or high school, during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for two years.

(3) If the offense involved a minor who is at least four years younger than the defendant, the defendant shall, as a full and separately served enhancement to any other enhancement provided in this subdivision, be punished by imprisonment in the state prison for one, two, or three years, at the discretion of the court.

(b) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(c) The additional punishment provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(d) Notwithstanding any other provision of law, the court may

strike the additional punishment provided for in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(e) The definitions contained in subdivision (e) of Section 11353.1 shall apply to this section.

(f) This section does not require either that notice be posted regarding the proscribed conduct or that the applicable 1,000-foot boundary limit be marked.

SEC. 2. Section 11380.1 of the Health and Safety Code is amended to read:

11380.1. (a) Notwithstanding any other provision of law, any person 18 years of age or over who is convicted of a violation of Section 11380, in addition to the punishment imposed for that conviction, shall receive an additional punishment as follows:

(1) If the offense involved phencyclidine (PCP), methamphetamine, lysergic acid diethylamide (LSD), or any analog of these substances and occurred upon the grounds of, or within, a church or synagogue, a playground, a public or private youth center, a child day care facility, or a public swimming pool, during hours in which the facility is open for business, classes, or school-related programs, or at any time when minors are using the facility, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for one year.

(2) If the offense involved phencyclidine (PCP), methamphetamine, lysergic acid diethylamide (LSD), or any analog of these substances and occurred upon, or within 1,000 feet of, the grounds of any public or private elementary, vocational, junior high school, or high school, during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for two years.

(3) If the offense involved a minor who is at least four years younger than the defendant, the defendant shall, as a full and separately served enhancement to any other enhancement provided in this subdivision, be punished by imprisonment in the state prison for one, two, or three years, at the discretion of the court.

(b) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(c) The additional punishment provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment provided for in this section if it

determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(e) The definitions contained in subdivision (e) of Section 11353.1 shall apply to this section.

(f) This section does not require either that notice be posted regarding the proscribed conduct or that the applicable 1,000-foot boundary limit be marked.

SEC. 3. Section 2 of this bill incorporates amendments to Section 11380.1 of the Health and Safety Code proposed by both this bill and AB 312. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 11380.1 of the Health and Safety Code, and (3) this bill is enacted after AB 312, in which case Section 1 of this bill shall not become operative.

CHAPTER 306

An act to amend Section 2 of Chapter 1338 of the Statutes of 1989 relating to prisons, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 25, 1993. Filed with Secretary of State August 26, 1993.]

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

SECTION 1. Section 2 of Chapter 1338 of the Statutes of 1989 is amended to read:

Sec. 2. (a) In enacting this section, the Legislature finds and declares that the decision to postpone the opening of the Pelican Bay State Prison imposed a significant cost burden on the County of Del Norte. County staff necessary to accommodate the added workload from the prison were hired and modifications to the county court facility necessary for the increased security requirements associated with the handling of maximum security prisoners were initiated. Because these expenditures were incurred by Del Norte County with the full expectation of the opening of the prison on time, and because the State of California was able to realize significant savings by postponing the opening of the prison, it is appropriate for the state to offer the county some assistance prior to the date Pelican Bay State Prison is occupied.

(b) (1) There is hereby appropriated from the General Fund the sum of one million one hundred ninety thousand dollars ($1,190,000) to the Controller for allocation as a loan to the County of Del Norte for the purpose of mitigating the impact of the late opening of Pelican Bay State Prison.

(2) The loan made pursuant to this subdivision shall be repaid

with interest at the rate calculated for moneys invested in the Pooled Money Investment Fund. Repayment, including interest, shall be made in annual installments of one hundred nineteen thousand dollars ($119,000) until the debt is fully paid. In the event that the Controller certifies that the County of Del Norte is in default on this loan, the Director of Corrections is authorized to reduce amounts owed by the Department of Corrections to the County of Del Norte by up to eighty thousand dollars ($80,000) in a fiscal year, and to transfer the amount thus reduced to the Controller to offset the amount owed by the County of Del Norte on this loan. The first payment on this loan shall be due on July 20, 1995.

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

In order to provide additional relief, as soon as possible, to Del Norte County for the costs incurred by the county due to the postponement in the opening of Pelican Bay State Prison, it is necessary that this act go into immediate effect.

CHAPTER 307

An act to amend Section 42001 of the Vehicle Code, relating to vehicles.

[Approved by Governor August 25, 1993. Filed with Secretary of State August 26, 1993.]

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

SECTION 1. Section 42001 of the Vehicle Code is amended to read:

42001. (a) Except as provided in Section 42000.5, 42001.1, 42001.2, 42001.3, 42001.5, 42001.7, 42001.8, 42001.9, 42001.11, or 42001.12, or subdivision (b) or (c) of this section, or Article 2 (commencing with Section 42030), every person convicted of an infraction for a violation of this code or of any local ordinance adopted pursuant to this code shall be punished as follows:

(1) By a fine not exceeding one hundred dollars ($100).

(2) For a second infraction occurring within one year of a prior infraction which resulted in a conviction, a fine not exceeding two hundred dollars ($200).

(3) For a third or any subsequent infraction occurring within one year of two or more prior infractions which resulted in convictions, a fine not exceeding two hundred fifty dollars ($250).

(b) Every person convicted of a misdemeanor violation of Section 2800, 2801, or 2803, insofar as they affect failure to stop and submit to inspection of equipment or for an unsafe condition endangering

any person, shall be punished as follows:

(1) By a fine not exceeding fifty dollars ($50) or imprisonment in the county jail not exceeding five days.

(2) For a second conviction within a period of one year, a fine not exceeding one hundred dollars ($100) or imprisonment in the county jail not exceeding 10 days, or both that fine and imprisonment.

(3) For a third or any subsequent conviction within a period of one year, a fine not exceeding five hundred dollars ($500) or imprisonment in the county jail not exceeding six months, or both that fine and imprisonment.

(c) A pedestrian convicted of an infraction for a violation of this code or any local ordinance adopted pursuant to this code shall be punished by a fine not exceeding fifty dollars ($50).

(d) Notwithstanding any other provision of law, any local public entity that employs peace officers, as designated under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, the California State University, and the University of California may, by ordinance or resolution, establish a schedule of fines applicable to infractions committed by bicyclists within its jurisdiction. Any fine, including all penalty assessments and court costs, established pursuant to this subdivision shall not exceed the maximum fine, including penalty assessment and court costs, otherwise authorized by this code for that violation. If a bicycle fine schedule is adopted, it shall be used by the courts having jurisdiction over the area within which the ordinance or resolution is applicable instead of the fines, including penalty assessments and court costs, otherwise applicable under this code.

CHAPTER 308

An act to amend Section 19410 of, and to repeal and add Section 19410.5 of, the Business and Professions Code, relating to horseracing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 25, 1993. Filed with Secretary of State August 26, 1993.]

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

SECTION 1. Section 19410 of the Business and Professions Code is amended to read:

19410. "Inclosure" is defined as follows:

(a) For a racing association licensed to conduct a live racing meeting, inclosure means all areas of the racing association's grounds, as designated by the racing association and approved by the board, excluding the public parking lot.

(b) For a fair licensed to conduct a live racing meeting, inclosure means those areas designated by the fair and approved by the board

for the purpose of conducting a live horseracing meeting.

(c) For a simulcast wagering facility, inclosure means those areas designated by the facility and approved by the board for the purpose of wagering on horseraces.

SEC. 2. Section 19410.5 of the Business and Professions Code is repealed.

SEC. 3. Section 19410.5 is added to the Business and Professions Code, to read:

19410.5. (a) The "inclosure-restricted" is that part of the inclosure that is enclosed by a wall, fence, or other physical barrier, where admission is obtained only upon the presentation of authorized credentials.

(b) The "inclosure-public" means all other areas of the inclosure designated by a racing association, fair, or simulcast wagering facility and approved by the board to which the public is admitted for the purpose of wagering on horseraces.

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

In order to facilitate free admission to satellite wagering facilities and to increase revenue to the state as a result of increased wagering activity, it is necessary that this act take effect immediately.

CHAPTER 309

An act to add Section 97.54 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor August 25, 1993. Filed with Secretary of State August 26, 1993.]

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

SECTION 1. Section 97.54 is added to the Revenue and Taxation Code, to read:

97.54. (a) Notwithstanding any other provision of this chapter, in the County of Nevada, the apportionment of property tax revenues made pursuant to Section 97.5 shall be modified for the 1993–94 fiscal year only, as follows:

(1) The auditor shall increase by the sum of fifty-six thousand six hundred eighty-four dollars ($56,684) the total amount of property tax revenues apportioned to the North San Juan Fire Protection District.

(2) The auditor shall reduce by the sum of thirty-one thousand seven hundred eighty-three dollars ($31,783) the total amount of property tax revenues apportioned to the Nevada County General Fund.

(3) The auditor shall reduce by the sum of twenty-four thousand nine hundred one dollars ($24,901) the total amount of property tax revenues apportioned to all of the following local agencies within Nevada County: Nevada County Solid Waste; the Nevada Irrigation District; the City of Nevada City; the City of Grass Valley; Higgins Area Fire Protection District; Truckee Fire Protection District; the Truckee Sanitary District; the Nevada Cemetery District; the Truckee Cemetery District; the Nevada Resource Conservation District; the San Juan Ridge County Water District; the Washington County Water District; the Tahoe Forest Hospital; the Donner Summit Public Utility District; the Tahoe Airport District; the Gold Flat Fire Protection District; the Alta Oaks Sunset Fire Protection District; the Forty Niner Fire Protection District; the Ophir Hill Fire Protection District; the Consolidated Fire District; the Peardale-Chicago Park Fire Protection District; the Rough and Ready Fire Protection District; the Watt Park Fire Protection District; the Truckee Donner Park and Recreation District; the Tahoe Truckee Sanitation District; the Penn Valley Fire District; County Service Area 1A; County Service Area 2; County Service Area 3; County Service Area 4; County Service Area 5; County Service Area 10; County Service Area 11; County Service Area 16; and the Lake of the Pines Ranchos Community Services District. The reduction required by this paragraph shall be made by the auditor by computing that percentage of the total amount of property tax revenues allocated in fiscal year 1993–94 to all of the jurisdictions and funds specified in this paragraph that equals twenty-four thousand nine hundred one dollars ($24,901) and by reducing the total amount of property tax revenues allocated to each of those jurisdictions and funds by that percentage.

(b) (1) For purposes of the calculations made pursuant to Section 97 in the 1994–95 fiscal year, the amount allocated to the North San Juan Fire Protection District in the 1993–94 fiscal year pursuant to paragraph (1) of subdivision (a) shall be included in the "amount of property tax revenue allocated pursuant to this chapter in the prior year."

(2) For the 1994–95 fiscal year and each fiscal year thereafter, the North San Juan Fire Protection District shall be allocated a share of the annual tax increment equal to 2.56 percent of the total of the annual tax increment amounts calculated under Section 98 for each of the tax rate areas comprising the North San Juan Fire Protection District. The auditor shall commensurately reduce on a pro rata basis the shares of the annual tax increment to be allocated to other local agencies, as defined in subdivision (a) of Section 95, within those tax rate areas.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of unique circumstances of the County of Nevada. The Legislature finds, therefore, that this special act is necessary. The

facts constituting this necessity are that the North San Juan Fire Protection District cannot adequately perform its functions relative to the preservation of life and property without property tax funding as provided in this act.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act.

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

CHAPTER 310

An act to add Section 18592 to the Government Code, relating to civil service.

[Approved by Governor August 25, 1993. Filed with Secretary of State August 26, 1993.]

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

SECTION 1. Section 18592 is added to the Government Code, to read:

18592. The "state civil service" shall include all fire protection personnel employed at the Armed Forces Reserve Center in Los Alamitos.

SEC. 2. (a) The California National Guard shall convert all fire protection personnel employed at the Armed Forces Reserve Center in Los Alamitos to state civil service employees by July 1, 1995, provided federal funds are available to pay all costs involved. The California National Guard shall notify the Department of Personnel Administration when the conversion is complete.

(b) Section 18592 of the Government Code, added by this act, shall not become operative unless and until the California National Guard notifies the Department of Personnel Administration that the conversion of the fire protection personnel specified in subdivision (a) is complete.

SEC. 3. This act shall become operative only if federal funds are made available for the specific purposes of this act to pay all costs resulting from this act.

CHAPTER 311

An act to amend Section 168 of the Penal Code, relating to crimes.

[Approved by Governor August 25, 1993. Filed with Secretary of State August 26, 1993.]

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

SECTION 1. Section 168 of the Penal Code is amended to read:

168. (a) Every district attorney, clerk, judge, or peace officer who, except by issuing or in executing a search warrant or warrant of arrest for a felony, willfully discloses the fact of the warrant prior to execution for the purpose of preventing the search or seizure of property or the arrest of any person shall be punished by imprisonment in the state prison or in a county jail for not exceeding one year.

(b) This section shall not prohibit the following:

(1) A disclosure made by a district attorney or the Attorney General for the sole purpose of securing voluntary compliance with the warrant.

(2) Upon the return of an indictment and the issuance of an arrest warrant, a disclosure of the existence of the indictment and arrest warrant by a district attorney or the Attorney General to assist in the apprehension of a defendant.

CHAPTER 312

An act to amend Sections 3902, 3904, 3910, 3911, 3920, 3930, 3941, and 3942 of, and to repeal Section 3912 of, the Public Utilities Code, relating to carriers.

[Approved by Governor August 25, 1993. Filed with Secretary of State August 26, 1993.]

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

SECTION 1. Section 3902 of the Public Utilities Code is amended to read:

3902. This chapter shall not be construed as adopting requirements for the registration of interstate or foreign highway carriers of property and passengers in excess of the standards for registration promulgated under the provisions of the Interstate Commerce Act or under the provisions of the Intermodal Surface Transportation Efficiency Act of 1991.

SEC. 2. Section 3904 of the Public Utilities Code is amended to read:

3904. Subject to Section 3902, for purposes of this chapter,

"highway carrier" means a motor carrier, as defined in subsection (13) of Section 10102 of Title 49 of the United States Code, of persons or property which either holds operating authority issued by the Interstate Commerce Commission or is engaged in operations exempt from regulation by the Interstate Commerce Commission pursuant to Section 10526 of Title 49 of the United States Code.

SEC. 3. Section 3910 of the Public Utilities Code is amended to read:

3910. (a) No highway carrier shall engage in any interstate or foreign transportation of property or passengers for compensation by motor vehicle on any public highway in this state without first having registered the operation with the commission or with the carrier's base registration state, if other than California, as determined in accordance with final regulations issued by the Interstate Commerce Commission pursuant to the Interstate Surface Transportation Efficiency Act of 1991 (49 U.S.C., Sec. 11506). To register with the commission, a highway carrier shall comply with the following:

(1) When the operation requires authority from the Interstate Commerce Commission under the Interstate Commerce Act, a copy of that authority shall be filed with the initial application for registration. A copy of any additions or amendments to the authority shall be filed with the commission. Proof of public liability protection shall also be filed with the commission.

(2) If the operation does not require authority from the Interstate Commerce Commission under the Interstate Commerce Act, an affidavit of that exempt status shall be filed with the application for registration.

(b) The commission shall grant registration upon the filing of the application pursuant to applicable law and the payment of any applicable fees, subject to the highway carrier's compliance with this chapter.

SEC. 4. Section 3911 of the Public Utilities Code is amended to read:

3911. The commission shall establish fees to be charged for registration consistent with the final regulations embodying standards as set forth in the Interstate Surface Transportation Efficiency Act of 1991 (49 U.S.C., Sec. 11506) and adopted by the Interstate Commerce Commission.

SEC. 5. Section 3912 of the Public Utilities Code is repealed.

SEC. 6. Section 3920 of the Public Utilities Code is amended to read:

3920. Registration shall not be granted to any carrier exempt from regulation by the Interstate Commerce Commission until there is filed with and accepted by the commission, in the form that it prescribes, a currently effective certificate of insurance or a surety bond evidencing bodily injury and property damage coverage not less than the minimum prescribed for owners and operators of for-hire vehicles regulated by the commission, or evidence of the qualification of the carrier as a self-insurer as may be authorized by

the commission under any applicable general orders of the commission.

SEC. 7. Section 3930 of the Public Utilities Code is amended to read:

3930. Registration shall not be granted by the commission to any carrier until there is filed with and accepted by the commission, in a form that it prescribes, a currently effective designation of a local agent to receive service of process.

SEC. 8. Section 3941 of the Public Utilities Code is amended to read:

3941. If any highway carrier of property or passengers granted registration under this chapter also engages in intrastate operation pursuant to authority issued by the commission, the carrier shall be subject to the vehicle identification requirements of Section 1033, 3543, or 5385, whichever is applicable, rather than the provisions of Section 3940.

SEC. 9. Section 3942 of the Public Utilities Code is amended to read:

3942. The commission shall assist the Department of the California Highway Patrol in the removal from service of any vehicle of any highway carrier which has failed or refused to register with the commission or with its base registration state pursuant to this chapter. In this connection, the commission may direct employees of the commission to be in attendance at weigh stations and highway checkpoints, if requested by the department, and furnish commission records and information related to highway carriers for the purpose of ascertaining the status of a highway carrier's registration.

SEC. 10. This act shall not become operative unless and until the Interstate Commerce Commission has adopted and made effective final regulations embodying standards set forth in the Interstate Surface Transportation Efficiency Act of 1991 (49 U.S.C., Sec. 11506).

CHAPTER 313

An act to amend Section 375 of the Water Code, relating to water.

[Approved by Governor August 25, 1993. Filed with Secretary of State August 26, 1993.]

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

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

(a) Water conservation is an important component of California's water policy for the future.

(b) All reasonable efforts to conserve water should continue to be a high priority of California's water policy.

(c) There exists a list of "water conservation best management practices" that are specific measures which, if implemented, achieve reasonable, yet substantial, reductions in water use by all Californians.

(d) These water conservation best management practices are listed in a document entitled, "Memorandum of Understanding Regarding Urban Water Conservation in California," dated September 1991.

(e) As of October 1992, 158 entities have signed on as supporters of this memorandum of understanding, including the Department of Water Resources, the Public Utilities Commission, and approximately 89 local governmental entities, 18 environmental organizations, and 23 private businesses.

(f) In his April 6, 1992, speech on water policy, Governor Pete Wilson specifically identified the need to implement these water conservation best management practices.

(g) Water conservation best management practice number 11, conservation pricing of water, will provide incentives to water customers to reduce average or peak water use, or both, through rate structure design.

SEC. 2. Section 375 of the Water Code is amended to read:

375. (a) Notwithstanding any other provision of the law, any public entity which supplies water at retail or wholesale for the benefit of persons within the service area or area of jurisdiction of the public entity may, by ordinance or resolution adopted by a majority of the members of the governing body after holding a public hearing upon notice and making appropriate findings of necessity for the adoption of a water conservation program, adopt and enforce a water conservation program to reduce the quantity of water used by those persons for the purpose of conserving the water supplies of the public entity.

(b) With regard to water delivered for other than agricultural uses, the ordinance or resolution may specifically require the installation of water-saving devices which are designed to reduce water consumption. The ordinance or resolution may also encourage water conservation through rate structure design.

(c) For the purposes of this section, "public entity" means a city, whether general law or chartered, county, city and county, special district, agency, authority, any other municipal public corporation or district, or any other political subdivision of the state.

CHAPTER 314

An act to add Section 12400.5 to the Insurance Code, relating to insurance.

[Approved by Governor August 25, 1993. Filed with Secretary of State August 26, 1993.]

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

SECTION 1. Section 12400.5 is added to the Insurance Code, to read:

12400.5. A title insurance company or underwritten title company engaged in the business of title insurance, as defined in Section 12340.3, shall not be deemed to have participated in any acts prohibited by Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code solely by reason of engaging in the business of title insurance as authorized pursuant to this chapter.

CHAPTER 315

An act to amend Section 1170.1 of the Penal Code, relating to sentencing.

[Approved by Governor August 27, 1993. Filed with Secretary of State August 30, 1993.]

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

SECTION 1. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section

667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8) or (9) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from such custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional

terms provided in Sections 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of such additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the

additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether such enhancements are pursuant to this or some other section of law. Each of such enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 2. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8) or (9) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be

calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted lewd or

lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.15, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 3. Section 2 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and AB 25. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 1170.1 of the Penal Code, and (3) this bill is enacted after AB 25, in which case Section 1 of this bill shall not become operative.

CHAPTER 316

An act to amend Section 10234.97 of the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 27, 1993. Filed with Secretary of State August 30, 1993.]

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

SECTION 1. Section 10234.97 of the Insurance Code is amended to read:

10234.97. (a) Any time long-term care coverage is replaced, the sales commission that is paid by the insurer and that represents the percentage of the sale normally paid for first year sales of long-term care policies or certificates shall be calculated based on the difference between the annual premium of the replacement coverage and that of the original coverage. If the premium on the replacement product is less than or equal to the premium for the product being replaced, the sales commission shall be limited to the percentage of sale normally paid for renewal of long-term care policies or certificates. Replacement shall be contingent upon the insurer's declaration that the replacement policy materially improves the position of the insured, pursuant to Section 10235.16. This provision does not apply to replacement coverage which is group insurance as described in subdivision (a) of Section 10231.6.

(b) For purposes of this section, "commission or other compensation" includes pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including, but not limited to, bonuses, gifts, prizes, awards, and finder's fees.

(c) Every long-term care insurer shall file with the commissioner within six months of the effective date of this section, its commission structure or an explanation of the insurer's compensation plan. Any amendments to the commission structure shall be filed with the commissioner before implementation.

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

In order to clarify the provisions of Chapter 1132 of the Statutes of 1992 pertaining to agent compensation for renewal or replacement of long-term care insurance policies, it is necessary for this act to take effect immediately.

CHAPTER 317

An act relating to state real property.

[Approved by Governor August 27, 1993. Filed with Secretary of State August 30, 1993.]

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

SECTION 1. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, or lease for current market value or for any lesser consideration authorized by law and upon those terms and conditions and subject to those reservations and exceptions as the Director of General Services determines are in the best interest of the state, all or any part of the following real property:

Parcel 1. Approximately 0.75 acre, with a structure used as a field office by the California Highway Patrol, at 1444 Parkway Drive, Crescent City, Del Norte County.

Parcel 2. Approximately 1.074 acres, with a structure used by the California Highway Patrol, at 464 N. Humbolt Avenue, Willows, Glenn County.

Parcel 3. Approximately 0.96 acre, with a structure used by the Employment Development Department, at 233 E. Commonwealth Avenue, Fullerton, Orange County.

Parcel 4. Approximately 10.01 acres, with improvements thereon, used by the California State University at Stanislaus, at 3500 Geer Road, Turlock, Stanislaus County.

Parcel 5. Approximately 1.68 acres of land, formerly the site of a field office of the Department of Motor Vehicles that was destroyed by fire in April of 1992, located at 2627 Pacific Avenue, Long Beach, Los Angeles County.

SEC. 2. (a) The Director of General Services may transfer to the County of Madera, at no cost, for public road purposes, real property consisting of approximately 1.76 acres with road improvements, known as Road 22, being a portion of the Central California Women's Facility, Madera, that was acquired pursuant to a joint powers agreement between the county and the Department of Corrections, upon those terms and conditions and subject to those reservations and exceptions as the Director of General Services determines are in the best interest of the state.

(b) The Director of General Services may transfer to the City of Delano and the County of Kern, at no cost, for public road purposes, real property consisting of approximately 31.13 acres with road improvements, known as Cecil Avenue, being a portion of the California State Prison, Delano, that was acquired pursuant to a joint powers agreement between the City of Delano, County of Kern, and the Department of Corrections, upon those terms and conditions and subject to those reservations and exceptions as the Director of

General Services determines are in the best interest of the state.

(c) The Director of General Services may transfer to the City of Wasco, at no cost, for public road purposes, real property consisting of approximately 0.138 acre with road improvements, known as Scofield Avenue, being a portion of the California State Prison, Wasco, that was acquired pursuant to a joint powers agreement between the City of Wasco and the Department of Corrections, upon those terms and conditions and subject to those reservations and exceptions as the Director of General Services determines are in the best interest of the state.

SEC. 3. The Director of General Services, with the approval of the Adjutant General, is hereby authorized to exchange with the County of Lake, approximately 0.29 acre of vacant state land at the Lake County Armory for adjoining land of similar size and value, upon those terms and conditions and subject to those reservations and exceptions as the Director of General Services determines are in the best interest of the state.

SEC. 4. The Director of General Services may sell to the County of Orange, for current market value or for any lesser consideration authorized by law, for flood control purposes, real property consisting of approximately 29.52 acres with improvements, being a portion of the Greenville-Banning Channel located at Fairview State Hospital in Orange County, upon those terms and conditions and subject to those reservations and exceptions as the Director of General Services determines are in the best interest of the state.

SEC. 5. (a) Notices of every public auction or bid opening shall be posted on the property to be sold under this act and shall be published in a newspaper of general circulation published in the county in which the real property to be sold is situated.

(b) Any sale, exchange, lease, or transfer of the parcels described in this act is exempt from Chapter 3 (commencing with Section 21100) to 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

SEC. 6. (a) The Department of General Services shall be reimbursed for any cost or expense incurred in the disposition of any parcels.

(b) The net proceeds of any moneys received from the disposition of any parcel described in this act shall be deposited in the General Fund and be available for appropriation in accordance with Section 15863 of the Government Code, except as follows:

(1) The net proceeds received from the disposition of Parcels 1, 2, and 5 in Section 1 shall be deposited in the Motor Vehicle Account in the State Transportation Fund.

(2) The net proceeds received from the disposition of Parcel 3 in Section 1 shall be deposited in the Employment Development Department Building Fund.

(3) The net proceeds received from the disposition of Parcel 4 in Section 1 shall be deposited in the California State University Dormitory Revenue Fund.

(4) The net proceeds, if any, received from the disposition of the parcel described in Section 3 shall be deposited in the Armory Fund.

SEC. 7. As to any property sold pursuant to this act consisting of 15 acres or less, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry. As to property sold pursuant to this act consisting of more than 15 acres, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits. The rights to prospect for, mine, and remove the deposits shall be limited to those areas of the property conveyed that the director, after consultation with the State Lands Commission, determines to be reasonably necessary for the removal of the deposits.

SEC. 8. As to any property sold pursuant to this act, the Director of General Services shall include in the contract of conveyance a statement to the effect that if the property that is the subject of the conveyance is subsequently found to contain a Native American burial ground, this fact shall be reported to the Legislature and the property may revert to the state if the Legislature, by statute, so provides.

CHAPTER 318

An act to amend Sections 634.5 and 2606 of, and to add Sections 633.1, 2680, and 2681 to, the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor August 27, 1993. Filed with Secretary of State August 30, 1993.]

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

SECTION 1. Section 633.1 is added to the Unemployment Insurance Code, to read:

633.1. For purposes of coverage under Part 2 (commencing with Section 2601), "employment" shall not include:

(a) Services performed for any public entity, nonprofit or for profit entity, organization, or business by an inmate of a state prison under the jurisdiction of the Department of Corrections, by an individual who is otherwise in the custody of the Department of Corrections, or by an individual who is otherwise incarcerated in any of the institutions set forth in Section 2680.

(b) Services performed for any public entity, nonprofit or for profit entity, organization, or business by a ward in the custody of the Department of the Youth Authority.

SEC. 2. Section 634.5 of the Unemployment Insurance Code is

amended to read:

634.5. Notwithstanding any other provision of this code or any other code or law, no provision of this code or any other code or law excluding service from "employment" shall apply to any public entity defined by Section 605 or to any nonprofit organization described by Section 608, except as provided by this section. With respect to any public entity defined by Section 605 or any nonprofit organization described by Section 608, "employment" does not include service excluded under Sections 629, 631, 635, and 639 to 648, inclusive, or service performed in any of the following:

(a) In the employ of (1) a church or convention or association of churches or (2) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

(b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order.

(c) In the employ of any public entity defined by Section 605, if the service is performed by an individual in the exercise of his or her duties as any of the following:

(1) An elected official.

(2) A member of a legislative body, or a member of the judiciary, of a state or political subdivision thereof.

(3) A member of a State National Guard or Air National Guard.

(4) An employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency.

(5) In a position which, under or pursuant to state law, is designated as either of the following:

(A) A major nontenured policymaking or advisory position.

(B) A policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.

(d) Except as provided by Section 605.5, by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of either:

(1) Rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury; or

(2) Providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market.

(e) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving work relief or work training.

(f) By a ward or an inmate of a custodial or penal institution pursuant to Article 1 (commencing with Section 2700), Article 4 (commencing with Section 2760), and Article 5 (commencing with Section 2780) of Chapter 5 of, and Article 1 (commencing with

Section 2800) of Chapter 6 of, Title 1 of Part 3 of the Penal Code, Section 4649 and Chapter 1 (commencing with Section 4951) of Part 4 of Division 4 of the Public Resources Code, and Sections 883, 884, and 1768 of the Welfare and Institutions Code.

(g) By an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

(h) By an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him or her at a fixed price, his or her compensation being based on retention of the excess of the price over the amount at which the newspapers or magazines are charged to him or her whether or not he or she is guaranteed a minimum amount of compensation for the service, or is entitled to be credited with the unsold newspapers or magazines turned back.

(i) As a substitute employee whose employment does not increase the size of the employer's normal work force, whose employment is required by law, and whose employment as a substitute employee does not occur on more than 60 days during the base period, except that this subdivision shall not take effect unless and until the United States Secretary of Labor, or his or her designee, finds that this subdivision is in conformity with federal requirements.

This section shall become operative on July 1, 1978.

SEC. 3. Section 2606 of the Unemployment Insurance Code is amended to read:

2606. "Employment" for the purposes of this part means:

(a) Service included in "employment" as defined by Part 1 (commencing with Section 100) of this division, except that with respect to service for any public entity as defined by Section 605 "employment" for the purposes of this part includes only:

(1) Service for a hospital established, maintained and operated pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code.

(2) Service performed by blind individuals and otherwise handicapped individuals, who do not hold civil service or permanent tenure positions, employed by the State of California for work in the California Industries for the Blind.

(3) Service performed for a public housing administration agency whether operated by state or local governmental subdivisions.

(4) Service performed by a state employee to the extent provided by Section 2781.

(5) Service covered under this part by an elective coverage agreement.

(b) Notwithstanding any other provision of this division, all service performed in the employ of a corporation, community chest, fund, or foundation, in connection with the operation of a health facility as defined in Section 1250 of the Health and Safety Code including the institutions described in subdivision (a) of Section 1270

of the Health and Safety Code but not including county hospitals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office and which is exempt from income tax under Section 501(a) of the Internal Revenue Code of 1954, except service performed by an individual as a duly ordained priest, clergyman, rabbi, rector, vicar, pastor, or minister of religion, or by a practitioner who heals the sick by prayer in the practice of religion, or by a reader whose duty it is to conduct regular religious services of a religious organization, or by a member of a religious order in the exercise of duties required by the order, or by any other individual performing service in the practice of religion by designation of the governing body of a religious organization and subject to discipline by, including removal by, the governing body.

This section shall become operative on July 1, 1978.

SEC. 4. Section 2680 is added to the Unemployment Insurance Code, to read:

2680. (a) An individual shall be ineligible for benefits under this part for any day during which he or she is incarcerated in any federal, state, or municipal penal institution, jail, medical facility, public or private hospital, or in any other place because of a criminal violation of a federal, state, or other municipal law or ordinance. For purposes of this section, "incarceration" includes any time spent in the custody of law enforcement authorities upon adjudication or conviction by a court of competent jurisdiction.

(b) This section shall apply only with respect to periods of incarceration commencing on or after January 1, 1994.

SEC. 5. Section 2681 is added to the Unemployment Insurance Code, to read:

2681. (a) Any individual who commits a crime shall be ineligible for benefits under this part if the individual is disabled due to an illness or injury caused by, or arising out of the commission of, arrest, investigation, or prosecution of any crime that results in a felony conviction.

(b) For purposes of this section, a plea or verdict of guilty, or a felony conviction following a plea of nolo contendere or no contest shall be considered to be a felony conviction under this part, irrespective of whether an order granting probation or suspending the imposition or execution of any sentence is issued.

(c) This section shall apply only with respect to convictions rendered on or after January 1, 1994, regardless of the date the disability commenced, or benefits were paid.

CHAPTER 319

An act to amend Section 987.2 of the Penal Code, relating to court appointed counsel.

[Approved by Governor August 27, 1993. Filed with Secretary of State August 30, 1993.]

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

SECTION 1. Section 987.2 of the Penal Code is amended to read:

987.2. (a) In any case in which a person, including a person who is a minor, desires but is unable to employ counsel, and in which counsel is assigned in the superior, municipal, or justice court to represent the person in a criminal trial, proceeding, or appeal, the following assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the county:

(1) In a county or city and county in which there is no public defender.

(2) In a county of the first or second class where there is no contract for criminal defense services between the county and one or more responsible attorneys.

(3) In a case in which the court finds that, because of a conflict of interest or other reasons, the public defender has properly refused.

(4) In a county of the first or second class where attorneys contracted by the county are unable to represent the person accused.

(b) The sum provided for in subdivision (a) may be determined by contract between the court and one or more responsible attorneys after consultation with the board of supervisors as to the total amount of compensation and expenses to be paid, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in those cases.

(c) In counties that utilize an assigned private counsel system as either the primary method of public defense or as the method of appointing counsel in cases where the public defender is unavailable, the county, the courts, or the local county bar association working with the courts are encouraged to do all of the following:

(1) Establish panels that shall be open to members of the State Bar of California.

(2) Categorize attorneys for panel placement on the basis of experience.

(3) Refer cases to panel members on a rotational basis within the level of experience of each panel, except that a judge may exclude an individual attorney from appointment to an individual case for good cause.

(4) Seek to educate those panel members through an approved training program.

(5) Establish a cost-efficient plan to insure maximum recovery of costs pursuant to Section 987.8.

(d) In a county of the first or second class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county and the courts have contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, the court shall utilize the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(e) In any case in which counsel is assigned as provided in subdivision (a), that counsel appointed by the court and any court-appointed licensed private investigator shall have the same rights and privileges to information as the public defender and the public defender investigator. It is the intent of the Legislature in enacting this subdivision to equalize any disparity that exists between the ability of private, court-appointed counsel and investigators, and public defenders and public defender investigators, to represent their clients. This subdivision is not intended to grant to private investigators access to any confidential Department of Motor Vehicles information not otherwise available to them. This subdivision is not intended to extend to private investigators the right to issue subpoenas.

(f) Notwithstanding any other provision of this section, where an indigent defendant is first charged in one county and establishes an attorney-client relationship with the public defender, defense services contract attorney, or private attorney, and where the defendant is then charged with an offense in a second or subsequent county, the court in the second or subsequent county may appoint the same counsel as was appointed in the first county to represent the defendant when all of the following conditions are met:

(1) The offense charged in the second or subsequent county would be joinable for trial with the offense charged in the first if it took place in the same county, or involves evidence which would be cross-admissible.

(2) The court finds that the interests of justice and economy will be best served by unitary representation.

(3) Counsel appointed in the first county consents to the appointment.

(g) The county may recover costs of public defender services under Chapter 6 (commencing with Section 4750) of Title 5 of Part 3 for any case subject to Section 4750.

(h) Counsel shall be appointed to represent, in the municipal or

justice court, a person who desires but is unable to employ counsel, when it appears that the appointment is necessary to provide an adequate and effective defense for the defendant.

(i) As used in this section, "county of the first or second class" means the county of the first class and county of the second class as provided by Sections 28020, 28022, and 28023 of the Government Code.

SEC. 2. Section 987.2 of the Penal Code is amended to read:

987.2. (a) In any case in which a person, including a person who is a minor, desires but is unable to employ counsel, and in which counsel is assigned in the superior, municipal, or justice court to represent the person in a criminal trial, proceeding, or appeal, the following assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the county:

(1) In a county or city and county in which there is no public defender.

(2) In a county of the first or second class where there is no contract for criminal defense services between the county and one or more responsible attorneys.

(3) In a case in which the court finds that, because of a conflict of interest or other reasons, the public defender has properly refused.

(4) In a county of the first or second class where attorneys contracted by the county are unable to represent the person accused.

(b) The sum provided for in subdivision (a) may be determined by contract between the court and one or more responsible attorneys after consultation with the board of supervisors as to the total amount of compensation and expenses to be paid, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in those cases.

(c) In counties that utilize an assigned private counsel system as either the primary method of public defense or as the method of appointing counsel in cases where the public defender is unavailable, the county, the courts, or the local county bar association working with the courts are encouraged to do all of the following:

(1) Establish panels that shall be open to members of the State Bar of California.

(2) Categorize attorneys for panel placement on the basis of experience.

(3) Refer cases to panel members on a rotational basis within the level of experience of each panel, except that a judge may exclude an individual attorney from appointment to an individual case for good cause.

(4) Seek to educate those panel members through an approved training program.

(5) Establish a cost-efficient plan to insure maximum recovery of costs pursuant to Section 987.8.

(d) In a county of the first or second class, the court shall first

utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county and the courts have contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, the court shall utilize the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(e) In a county of the first or second class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county has created a second public defender and contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, the court shall next utilize the services of the second public defender and then the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the second public defender or a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(f) In any case in which counsel is assigned as provided in subdivision (a), that counsel appointed by the court and any court-appointed licensed private investigator shall have the same rights and privileges to information as the public defender and the public defender investigator. It is the intent of the Legislature in enacting this subdivision to equalize any disparity that exists between the ability of private, court-appointed counsel and investigators, and public defenders and public defender investigators, to represent their clients. This subdivision is not intended to grant to private investigators access to any confidential Department of Motor Vehicles information not otherwise available to them. This subdivision is not intended to extend to private investigators the right to issue subpoenas.

(g) Notwithstanding any other provision of this section, where an indigent defendant is first charged in one county and establishes an attorney-client relationship with the public defender, defense services contract attorney, or private attorney, and where the defendant is then charged with an offense in a second or subsequent county, the court in the second or subsequent county may appoint the same counsel as was appointed in the first county to represent the defendant when all of the following conditions are met:

(1) The offense charged in the second or subsequent county would be joinable for trial with the offense charged in the first if it took place in the same county, or involves evidence which would be cross-admissible.

(2) The court finds that the interests of justice and economy will be best served by unitary representation.

(3) Counsel appointed in the first county consents to the appointment.

(h) The county may recover costs of public defender services under Chapter 6 (commencing with Section 4750) of Title 5 of Part 3 for any case subject to Section 4750.

(i) Counsel shall be appointed to represent, in the municipal or justice court, a person who desires but is unable to employ counsel, when it appears that the appointment is necessary to provide an adequate and effective defense for the defendant.

(j) As used in this section, "county of the first or second class" means the county of the first class and county of the second class as provided by Sections 28020, 28022, and 28023 of the Government Code.

SEC. 3. Section 2 of this bill incorporates amendments to Section 987.2 of the Penal Code proposed by both this bill and AB 1170. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 987.2 of the Penal Code, and (3) this bill is enacted after AB 1170, in which case Section 1 of this bill shall not become operative.

CHAPTER 320

An act to amend Sections 10750.9, 10752, 10753, 10754.2, and 10755.2 of the Water Code, relating to water.

[Approved by Governor August 27, 1993. Filed with Secretary of State August 30, 1993.]

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

SECTION 1. Section 10750.9 of the Water Code is amended to read:

10750.9. (a) A local agency that commences procedures, prior to January 1, 1993, to adopt an ordinance or resolution to establish a program for the management of groundwater pursuant to Part 2.75 (commencing with Section 10750), as added by Chapter 903 of the Statutes of 1991, may proceed to adopt the ordinance or resolution pursuant to Part 2.75, and the completion of those procedures is deemed to meet the requirements of this part.

(b) A local agency that has adopted an ordinance or resolution pursuant to Part 2.75 (commencing with Section 10750), as added by Chapter 903 of the Statutes of 1991, may amend its groundwater

management program by ordinance or resolution of the governing body of the local agency to include any of the plan components set forth in Section 10753.7.

SEC. 2. Section 10752 of the Water Code is amended to read:

10752. Unless the context otherwise requires, the following definitions govern the construction of this part:

(a) "Groundwater" means all water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but does not include water which flows in known and definite channels.

(b) "Groundwater basin" means any basin identified in the department's Bulletin No. 118, dated September 1975, and any amendments to that bulletin, but does not include a basin in which the average well yield is less than 100 gallons per minute.

(c) "Groundwater extraction facility" means any device or method for the extraction of groundwater within a groundwater basin.

(d) "Groundwater management plan" or "plan" means a document that describes the activities intended to be included in a groundwater management program.

(e) "Groundwater management program" or "program" means a coordinated and ongoing activity undertaken for the benefit of a groundwater basin, or a portion of a groundwater basin, pursuant to a groundwater management plan adopted pursuant to this part.

(f) "Groundwater recharge" means the augmentation of groundwater, by natural or artificial means, with surface water or recycled water.

(g) "Local agency" means any local public agency that provides water service to all or a portion of its service area, and includes a joint powers authority formed by local public agencies that provide water service.

(h) "Recharge area" means the area that supplies water to an aquifer in a groundwater basin and includes multiple wellhead protection areas.

(i) "Watermaster" means a watermaster appointed by a court or pursuant to other provisions of law.

(j) "Wellhead protection area" means the surface and subsurface area surrounding a water well or well field that supplies a public water system through which contaminants are reasonably likely to migrate toward the water well or well field.

SEC. 3. Section 10753 of the Water Code is amended to read:

10753. (a) Any local agency, whose service area includes a groundwater basin, or a portion of a groundwater basin, that is not subject to groundwater management pursuant to other provisions of law or a court order, judgment, or decree, may, by ordinance, or by resolution if the local agency is not authorized to act by ordinance, adopt and implement a groundwater management plan pursuant to this part within all or a portion of its service area.

(b) Notwithstanding subdivision (a), a local public agency, other

than an agency defined in subdivision (g) of Section 10752, that provides flood control, groundwater management, or groundwater replenishment, or a local agency formed pursuant to this code for the principal purpose of providing water service that has not yet provided that service, may exercise the authority of this part within a groundwater basin that is located within its boundaries within areas that are either of the following:

(1) Not served by a local agency.

(2) Served by a local agency whose governing body, by a majority vote, declines to exercise the authority of this part and enters into an agreement with the local public agency pursuant to Section 10750.7 or 10750.8.

SEC. 4. Section 10754.2 of the Water Code is amended to read:

10754.2. (a) Subject to Section 10754.3, except as specified in subdivision (b), a local agency that adopts a groundwater management plan pursuant to this part, may impose equitable annual fees and assessments for groundwater management based on the amount of groundwater extracted from the groundwater basin within the area included in the groundwater management plan to pay for costs incurred by the local agency for groundwater management, including, but not limited to, the costs associated with the acquisition of replenishment water, administrative and operating costs, and costs of construction of capital facilities necessary to implement the groundwater management plan.

(b) The local agency may not impose fees or assessments on the extraction and replacement of groundwater pursuant to a groundwater remediation program required by other provisions of law or a groundwater storage contract with the local agency.

SEC. 5. Section 10755.2 of the Water Code is amended to read:

10755.2. (a) It is the intent of the Legislature to encourage local agencies, within the same groundwater basin, that are authorized to adopt groundwater management plans pursuant to this part, to adopt and implement a coordinated groundwater management plan.

(b) For the purpose of adopting and implementing a coordinated groundwater management program pursuant to this part, a local agency may enter into a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code with public agencies, or a memorandum of understanding with public or private entities providing water service.

(c) A local agency may enter into agreements with public entities or private parties for the purpose of implementing a coordinated groundwater management plan.

CHAPTER 321

An act to amend Section 785 of, and to add Section 10296 to, the Insurance Code, relating to insurance.

[Approved by Governor August 27, 1993. Filed with Secretary of State August 30, 1993.]

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

SECTION 1. Section 785 of the Insurance Code is amended to read:

785. (a) All insurers, brokers, agents, and others engaged in the transaction of insurance owe a prospective insured who is age 65 years or older, a duty of honesty, good faith, and fair dealing. This duty is in addition to any other duty, whether express or implied, that may exist.

(b) Conduct of an insurer, broker, or agent, or other person engaged in the transaction of insurance, during the offer and sale of a policy or certificate previous to the purchase is relevant to any action alleging a breach of the duty of good faith and fair dealing.

(c) Except where explicitly provided to the contrary, this article shall not apply to any of the following:

(1) Medicare supplement insurance as defined in subdivision (b) of Section 10192.1.

(2) Long-term care insurance as defined in Section 10231.2.

(3) Disability coverage provided through the insured's employer or former employer.

(4) Disability insurance policies or certificates principally designed to provide coverage for accidents or expenses incurred while traveling if the premium for the policy or certificate is ten dollars ($10) or less.

(5) Blanket disability insurance as defined in Section 10270.3.

(6) Credit disability insurance as defined in Section 779.2.

(7) Accidental death insurance.

(8) Until January 1, 1997, disability policies or certificates which are sold through direct response methods of delivery.

(9) Disability income insurance as defined in subdivision (i) of Section 799.01.

(d) Provided that the requirements of Section 10296 are met, this article shall not apply to transportation ticket policies and baggage insurance policy types allowable for sale by travel agents pursuant to Section 1753.

SEC. 2. Section 10296 is added to the Insurance Code, to read:

10296. The following written notice shall be provided to every potential applicant for a transportation ticket policy at the time the sales presentation is made:

"NOTICE: This plan contains disability insurance benefits or health insurance benefits, or both, that only apply during the

covered trip. You may have coverage from other sources that already provides you with these benefits. You should review your existing policies. If you have any questions about your current coverage, call your insurer or health plan."

CHAPTER 322

An act to amend Section 8880.28 of the Government Code, relating to the state lottery.

[Approved by Governor August 27, 1993. Filed with Secretary of State August 30, 1993.]

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

SECTION 1. Section 8880.28 of the Government Code is amended to read:

8880.28. Limitations on Types of Lottery Games

(a) The commission shall promulgate rules and regulations specifying the types of lottery games to be conducted by the Lottery, provided:

(1) No lottery game may use the theme of bingo, roulette, dice, baccarat, blackjack, Lucky 7's, draw poker, slot machines, dog racing, or horse racing.

(2) In lottery games utilizing tickets, each ticket in these games shall bear a unique number distinguishing it from every other ticket in that game; and no name of an elected official shall appear on these tickets.

(3) In games utilizing computer terminals or other devices, no coins or currency shall be dispensed to players from these computer terminals or devices.

(b) Notwithstanding subdivision (a), no changes in the types of games or methods of delivery of these games that incorporate technologies or mediums that did not exist, were not widely available, or were not commercially feasible at the time of the enactment of this chapter shall be made on and after January 1, 1994, unless all of the following conditions are met:

(1) This chapter is amended by statute to expressly authorize these changes.

(2) The act making the amendments contains express legislative findings that the amendments are consistent with the terms of, and further the purposes of, this chapter.

(3) The amendments comport with applicable state and federal law.

SEC. 2. The Legislature finds and declares that this act furthers the purpose of the California State Lottery Act of 1984.

CHAPTER 323

An act to add Section 1871.1 to the Insurance Code, relating to insurance fraud.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 1871.1 is added to the Insurance Code, to read:

1871.1. Insurers and their agents, while they are investigating suspected fraud claims, shall have access to all relevant public records that are required to be open for inspection under Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, and any regulations thereunder. This section restates existing law, and the Legislature does not intend to grant insurers or their agents access to public records other than to those public records available to them under existing law.

CHAPTER 324

An act to amend Section 6459 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 6459 of the Revenue and Taxation Code is amended to read:

6459. (a) The board for good cause may extend for not to exceed one month the time for making any return or paying any amount required to be paid under this part. The extension may be granted at any time provided a request therefor is filed with the board within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been due without the extension until the date of payment.

(b) The board may grant an extension for more than one month if both of the following conditions occur:

(1) A budget for the state has not been adopted by July 1.

(2) The person requesting the extension is a creditor of the state who has not been paid because of the state's failure to timely adopt

a budget.

Any extension granted under this subdivision shall expire no later than the last day of the month in which the budget is adopted or one month from the due date of the return or payment, whichever comes later.

Any person to whom an extension has been granted under this subdivision shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been due without the extension until the date of payment. However, no interest shall be due on that portion of the payment equivalent to the amount due to the person from the state on the due date of the payment.

CHAPTER 325

An act to amend Sections 2, 4, 5, and 6 of Chapter 27 of the Statutes of 1992, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 2 of Chapter 27 of the Statutes of 1992 is amended to read:

Sec. 2. (a) It is found and declared that enactment of the California-Nevada Super Speed Ground Transportation Act is a declaration of legislative intent that the States of California and Nevada continue to jointly consider, and if justified, pursue the development of a super speed ground transportation system connecting southern California with southern Nevada.

(b) The system will serve the following public purposes:

(1) Provide economic benefits to both southern California and southern Nevada.

(2) Reduce reliance on gasoline and diesel fueled engines and encourage the use of alternative energy sources.

(3) Reduce congestion on Interstate 15 between southern California and Las Vegas.

(4) Provide a working example for a state-of-the-art transportation system that could play an essential role in the development of future commuter service in the Los Angeles basin and the Las Vegas valley.

(5) Provide quick and convenient transportation service for residents and visitors visiting in southern California and southern Nevada.

(6) It is further found and declared that the purposes of this act

are better served if the term of the commission is extended, thereby enabling it to obtain financing, maintain continuity, and promote long-term plans.

SEC. 2. Section 4 of Chapter 27 of the Statutes of 1992 is amended to read:

Sec. 4. (a) There is hereby created the California-Nevada Super Speed Ground Transportation Commission.

(b) The governing body of the commission shall be constituted as follows:

(1) A California delegation, consisting of the members serving on the commission on June 30, 1992, pursuant to this chapter, unless the appointing authority of a member so serving elects to appoint another person in place of that member.

(2) A Nevada delegation, consisting of eight members appointed as required by Nevada law.

(3) The commission shall elect one of its members to be the chairperson.

(c) The California members of the commission may not approve the submittal of an application for funding to any federal agency if that application is in conflict with, or competition for, the funding of one or more corridors that are entirely within the state.

(d) The commission shall obtain the approval of the California Intercity High-Speed Rail Commission, if there is a rail commission, before applying for any federal funds.

SEC. 3. Section 5 of Chapter 27 of the Statutes of 1992 is amended to read:

Sec. 5. (a) The commission may prepare a plan for the construction and operation of a super speed ground transportation system at no expense to the State of California principally following the route of Interstate Highway 15 between the City of Las Vegas, Nevada, and a point in southern California. The commission shall not include in the final plan any site for the western terminus unless the board of supervisors of the county of the proposed site after public hearings approves that site selection.

(b) The final plan shall be submitted to, and ratified by, the California Legislature, by statute, and the Nevada Legislature or Nevada Legislative Commission, as required by Nevada law, before the commission or a franchisee of the commission begins construction and obtains certificates and permits necessary for construction or use of public right-of-way.

(c) Subject to subdivisions (a) and (b), the commission may do any of the following:

(1) Conduct engineering and other studies related to the selection and acquisition of right-of-way and the selection of a franchisee, including, but not limited to, environmental impact studies, socioeconomic impact studies, and financial feasibility studies. All local, state, and federal environmental requirements shall be met by the commission.

(2) Evaluate alternative super speed rail technologies, systems,

and operators, and select a franchisee to build and operate the super speed rail system between southern California and Las Vegas.

(3) Establish criteria for the award of a franchise.

(4) Accept grants, gifts, fees, and allocations from Nevada or its political subdivisions, the federal government, foreign governments, and any other private sources. There shall be no public cost to the State of California or any of its political subdivisions.

(5) Issue debt, but this debt shall not constitute an obligation of the States of California or Nevada, or any of their political subdivisions.

(6) Hire an executive officer, other staff, and any consultants deemed appropriate.

(7) Select a proposed franchisee, a proposed route, and proposed terminal sites.

(d) The commission shall incorporate under the nonprofit corporation laws of California. It shall have all the powers and duties of a nonprofit corporation under California law.

(e) All meetings of the commission shall be open to the public to the extent required by the law of the State of California or the State of Nevada, whichever imposes the greater requirement applicable to local governments at the time meetings are held.

(f) All members of the commission shall be subject to the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

SEC. 4. Section 6 of Chapter 27 of the Statutes of 1992 is amended to read:

Sec. 6. This act shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1996, deletes or extends that date.

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

In order that plans and projects essential to solve various transportation problems of California may be continued, it is necessary that this act take effect immediately.

CHAPTER 326

An act to amend Sections 44979, 45202, and 88202 of the Education Code, relating to certificated and classified employees.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 44979 of the Education Code is amended to read:

44979. Any certificated employee of any school district who has been an employee of that district for a period of one school year or more and who accepts a position requiring certification qualifications in another school district or community college district at any time during the second or any succeeding school year of his or her employment with the first school district, or who, within the school year succeeding the school year in which employment is terminated, signifies acceptance of his or her election or employment in a position requiring certification qualifications in another school district or community college district, shall have transferred with him or her to the second district the total amount of leave of absence for illness or injury to which he or she is entitled under Section 44978. The State Board of Education shall adopt rules and regulations prescribing the manner in which the first district shall certify to the second district the total amount of leave of absence for illness or injury to be transferred. No governing board shall adopt any policy or rule, written or unwritten, which requires any certificated employee transferring to its district to waive any part or all of the leave of absence which he or she may be entitled to have transferred in accordance with this section.

SEC. 2. Section 45202 of the Education Code is amended to read:

45202. Any classified employee of any school district, county superintendent of schools, or community college district who has been employed for a period of one calendar year or more whose employment is terminated for reasons other than action initiated by the employer for cause and who subsequently accepts employment with a school district or county superintendent of schools within one year of the termination of his or her former employment, shall have transferred with him or her to the school district or county superintendent of schools the total amount of earned leave of absence for illness or injury to which he or she is entitled under Section 45191 or 88191. This transfer shall be in the same manner as is provided for certificated employees.

In any case where an employee was terminated as a result of action initiated by the employer for cause, the transfer may be made if agreed to by the governing board of the school district or the county superintendent of schools newly employing the employee.

All or any part of the previous service, not separated by a break in service greater than one year as of the last day of paid service, may, if agreed to by the employing entity, be construed to have been served in the school district or county superintendent of schools of employment for seniority purposes, except that the previous service may not be counted, for seniority purposes, when position or personnel reduction is ordered, for any reason, by the board.

No governing board of a school district shall adopt any policy or rule, written or unwritten, which requires all classified employees, or any individual classification, or group of classifications of employees transferring to its district to waive any part or all benefits which they may be entitled to have transferred in accordance with this section.

This section shall apply to school districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240) of this chapter.

SEC. 3. Section 88202 of the Education Code is amended to read:

88202. Any classified employee of a community college district, school district, or county superintendent of schools who has been employed for a period of one calendar year or more whose employment is terminated for reasons other than action initiated by the employer for cause and who subsequently accepts employment with a community college district or county superintendent of schools within one year of the termination of his or her former employment, shall have transferred with him or her to the employing community college district or county superintendent of schools the total amount of earned leave of absence for illness or injury to which he or she is entitled under Section 45191 or 88191. This transfer shall be in the same manner as is provided for academic employees.

In any case where an employee was terminated as a result of action initiated by the employer for cause, the transfer may be made if agreed to by the governing board of the community college district or the county superintendent of schools newly employing the employee.

All or any part of the previous service, not separated by a break in service greater than one year as of the last day of paid service, may, if agreed to by the employing entity, be construed to have been served in the employing community college district or county superintendent of schools of employment for seniority purposes, except that the previous service may not be counted, for seniority purposes, when position or personnel reduction is ordered, for any reason, by the board.

No governing board of a community college district shall adopt any policy or rule, written or unwritten, that requires all classified employees, or any individual classification, or group of classifications of employees transferring to its district to waive any part or all benefits which they may be entitled to have transferred in accordance with this section.

This section shall apply to community college districts that have

adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060) of this chapter.

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

CHAPTER 327

An act to amend Section 1789.37 of the Civil Code, relating to check cashers.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 1789.37 of the Civil Code is amended to read:

1789.37. (a) Every owner of a check casher's business shall obtain a permit from the Department of Justice to conduct a check casher's business.

(b) All applications for a permit to conduct a check casher's business shall be filed with the department in writing, signed by the applicant if an individual or by a member or officer authorized to sign if the applicant is a corporation or other entity, and shall state the name of the business, the type of business engaged in, and the business address. Each applicant shall be fingerprinted.

(c) Each applicant for a permit to conduct a check casher's business shall pay a fee not to exceed the cost of processing the application, fingerprinting the applicant, and checking or obtaining the criminal record of the applicant, at the time of filing the application.

(d) Each applicant shall annually, beginning one year from the date of issuance of a check casher's permit, file an application for renewal of the permit with the department, along with payment of a renewal fee not to exceed the cost of processing the application for renewal and checking or obtaining the criminal record of the applicant.

(e) The department shall deny an application for a permit to

conduct a check casher's business, or for renewal of a permit, if the applicant has a felony conviction involving dishonesty, fraud, or deceit, provided the crime is substantially related to the qualifications, functions, or duties of a person engaged in the business of check cashing.

(f) The department shall adopt regulations to implement this section, and shall determine the amount of the application fees required by this section. The department shall prescribe forms for the applications and permit required by this section, which shall be uniform throughout the state.

CHAPTER 328

An act to amend Section 51553 of the Education Code, relating to education.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 51553 of the Education Code is amended to read:

51553. (a) All public elementary, junior high, and senior high school classes that teach sex education and discuss sexual intercourse shall emphasize that abstinence from sexual intercourse is the only protection that is 100 percent effective against unwanted teenage pregnancy, sexually transmitted diseases, and acquired immune deficiency syndrome (AIDS) when transmitted sexually. All material and instruction in classes that teach sex education and discuss sexual intercourse shall be age appropriate.

(b) All sex education courses that discuss sexual intercourse shall satisfy the following criteria:

(1) Course material and instruction shall be age appropriate.

(2) Course material and instruction shall stress that abstinence is the only contraceptive method which is 100 percent effective, and that all other methods of contraception carry a risk of failure in preventing unwanted teenage pregnancy. Statistics based on the latest medical information shall be provided to pupils citing the failure and success rates of condoms and other contraceptives in preventing pregnancy.

(3) Course material and instruction shall stress that sexually transmitted diseases are serious possible hazards of sexual intercourse. Pupils shall be provided with statistics based on the latest medical information citing the failure and success rates of condoms in preventing AIDS and other sexually transmitted diseases.

(4) Course material and instruction shall include a discussion of

the possible emotional and psychological consequences of preadolescent and adolescent sexual intercourse outside of marriage and the consequences of unwanted adolescent pregnancy.

(5) Course material and instruction shall stress that pupils should abstain from sexual intercourse until they are ready for marriage.

(6) Course material and instruction shall teach honor and respect for monogamous heterosexual marriage.

(7) Course material and instruction shall advise pupils of the laws pertaining to their financial responsibility to children born in and out of wedlock.

(8) Course material and instruction shall advise pupils that it is unlawful for males of any age to have sexual relations with females under the age of 18 to whom they are not married, pursuant to Section 261.5 of the Penal Code.

(9) Course material and instruction shall emphasize that the pupil has the power to control personal behavior. Pupils shall be encouraged to base their actions on reasoning, self-discipline, sense of responsibility, self-control, and ethical considerations, such as respect for one's self and others.

(10) Course material and instruction shall teach pupils to not make unwanted physical and verbal sexual advances, how to say "no" to unwanted sexual advances, and shall include information about sexual assault, verbal, physical, and visual, including, but not limited to, nonconsensual sexual advances, nonconsensual physical sexual contact, and rape by an acquaintance, commonly referred to as "date rape." This course material and instruction shall contain methods of preventing sexual assault by an acquaintance, including exercising good judgment and avoiding behavior that impairs good judgment, and shall also encourage youth to resist negative peer pressure. This course material and instruction also shall inform pupils of the potential legal consequences of sexual assault by an acquaintance. Specifically, pupils shall be advised that it is unlawful to touch an intimate part of another person, as specified in subdivision (d) of Section 243.4 of the Penal Code.

Pupils also shall be taught that it is wrong to take advantage of, or to exploit, another person.

Course material and instruction given pursuant to this paragraph shall be age appropriate.

CHAPTER 329

An act to amend Section 798.70 of the Civil Code, relating to mobilehome parks.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 798.70 of the Civil Code is amended to read:

798.70. A homeowner, an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, or the agent of any such person, may advertise the sale or exchange of his or her mobilehome, or, if not prohibited by the terms of an agreement with the management, may advertise the rental of his or her mobilehome, by displaying a sign in the window of the mobilehome, or by a sign posted on the side of the mobilehome facing the street, or by a sign in front of the mobilehome facing the street, stating that the mobilehome is for sale or exchange or, if not prohibited, for rent by the owner of the mobilehome or his or her agent. Any such person also may display a sign conforming to these requirements indicating that the mobilehome is on display for an "open house," unless the park rules prohibit the display of an open house sign. The sign shall state the name, address, and telephone number of the owner of the mobilehome or his or her agent and the sign face shall not exceed 24 inches in width and 36 inches in height. Signs posted in front of a mobilehome pursuant to this section may be of an H-frame or A-frame design with the sign face perpendicular to, but not extending into, the street. Homeowners may attach to the sign or their mobilehome tubes or holders for leaflets which provide information on the mobilehome for sale, exchange, or rent.

CHAPTER 330

An act to add Section 76391 to the Education Code, relating to postsecondary education.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 76391 is added to the Education Code, to read:

76391. Notwithstanding Section 76360, the governing board of

the Santa Monica Community College District may require payment of a parking fee at a campus in excess of the limits set forth in subdivision (a) of Section 76360 for the purpose of funding the construction of oncampus parking facilities if both of the following conditions exist at the campus:

(a) The full-time equivalent students (FTES) per parking space on the campus exceeds the statewide average FTES per parking space on community college campuses.

(b) The market price per square foot of land adjacent to the campus exceeds the statewide average market price per square foot of land adjacent to community college campuses.

If the governing board requires payment of a parking fee in excess of the limits set forth in subdivision (a) of Section 76360, the fee may not exceed the actual cost of constructing oncampus parking facilities or sixty dollars ($60) per semester, whichever is less. Students who receive financial assistance pursuant to any of the programs described in subdivision (g) of Section 76300 shall be exempt from parking fees imposed pursuant to this section that exceed twenty dollars ($20) per semester.

SEC. 2. Due to the unique circumstances concerning the Santa Monica Community College District, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 331

An act to amend Sections 11324 and 11340 of the Business and Professions Code, and to amend Sections 1086, 1087, and 1088 of the Civil Code, relating to real estate.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 11324 of the Business and Professions Code is amended to read:

11324. An individual who is not a state licensed or certified appraiser may assist in the preparation of an appraisal under the following conditions:

(a) The assistance is under the direct supervision of an individual who is a licensed or certified appraiser and the final conclusion as to value is made by a licensed or certified appraiser.

(b) The final appraisal document is approved and signed, with acceptance of full responsibility, by the supervising individual who is licensed or certified by the state pursuant to this part, identifies the assisting individual, and identifies the scope of work performed by the individual who assisted in preparation of the appraisal.

SEC. 2. Section 11340 of the Business and Professions Code is amended to read:

11340. The director shall adopt regulations governing the process and procedure of applying for a real estate appraiser license and real estate appraiser certificate which shall include, but not be limited to, necessary experience or education, equivalency, and minimum requirements of the Appraisal Foundation, if any.

(a) For purposes of the educational background requirements established under this section, the director shall grant credits for any courses taken on real estate appraisal ethics or practices pursuant to Section 10153.2, or which are deemed by the director to meet standards established pursuant to this part and federal law.

(b) For the purpose of implementing and applying this section, the director shall, with the advice and assistance of the committee, prescribe by regulation "equivalent courses" and "equivalent experience." The experience of employees of an assessor's office or the State Board of Equalization in setting forth opinions of value of real property for tax purposes shall be deemed equivalent to experience in federally related real estate appraisal activity. Notwithstanding any other law, a holder of a valid real estate broker license shall be deemed to have completed appraisal license application experience requirements upon proof that he or she has accumulated 1,000 hours of experience in the valuation of real property.

(c) The director shall adopt regulations governing the process of applying for certification as a state certified real estate appraiser which shall meet, at a minimum, the requirements and standards established by the Appraisal Foundation, the Resolution Trust Corporation, and the federal financial institutions regulatory agencies acting pursuant to Section 1112 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73 (FIRREA). The director shall, by regulation, require the application for a real estate appraiser license and real estate appraiser certificate to include the applicant's social security number.

SEC. 3. Section 1086 of the Civil Code is amended to read:

1086. As used in this article, the following terms have the meanings stated in this section:

(a) "Property" means real property or a mobilehome, as defined in Section 18008 of the Health and Safety Code.

(b) "Sell" and "sale" include lease and exchange.

(c) "Buyer" includes a lessee in case of a lease and the party with whom property is exchanged in case of an exchange.

(d) An "agent" is one authorized by law to act in that capacity for that type of property, and is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code or is a licensee, as defined in Section 18006 of the Health and Safety Code.

(e) An "appraiser" is one licensed or certified under Part 3 (commencing with Section 11300) of Division 4 of the Business and

Professions Code.

(f) A "listing" is a written contract between an owner of property and an agent by which the agent has been authorized to sell the property or to find or obtain a buyer.

A listing may be any of the following:

(1) An "exclusive right to sell listing" is a listing whereby the owner grants to an agent, for a specified period of time, the exclusive right to sell or to find or obtain a buyer for the property, and the agent is entitled to the agreed compensation if during that period of time the property is sold, no matter who effected the sale, or the listing agent receives and presents to the owner any enforceable offer from a ready, able, and willing buyer on terms authorized by the listing or accepted by the owner. The exclusive right to sell listing may provide for compensation of the listing agent if the property is sold within a specified period after termination of the listing to anyone with whom the agent has had negotiations before that termination.

(2) An "exclusive agency listing" is the same as an "exclusive right to sell listing," except that the owner reserves the right to sell directly but not through any other agent and, in that event, without obligation to pay compensation to the agent.

(3) An "open listing" is a listing which grants no exclusive rights or priorities to the listing agent, and a commission is payable to the agent only if the agent procures and presents to the owner an enforceable offer from a ready, able, and willing buyer on the terms authorized by the listing or accepted by the owner, before the property is otherwise sold either through another agent or by the owner directly and before the listing expires by its terms or is revoked.

(g) A "listing agent" is one who has obtained a listing of property of the kind in respect of which he or she is authorized by law to act as an agent for compensation.

(h) A "selling agent" is an agent participant in a multiple listing service who acts in cooperation with a listing agent and who sells, or finds and obtains a buyer for, the property.

(i) "Sold" includes leased and exchanged. A property is sold when a legally binding commitment to sell the property comes into existence.

SEC. 4. Section 1087 of the Civil Code is amended to read:

1087. A multiple listing service is a facility of cooperation of agents and appraisers, operating through an intermediary which does not itself act as an agent or appraiser, through which agents establish express or implied legal relationships with respect to listed properties, or which may be used by agents and appraisers, pursuant to the rules of the service, to prepare market evaluations and appraisals of real property. If an open listing is placed in the multiple listing service, the total compensation that the owner is to pay shall go to the selling agent who procures an enforceable offer from a ready, able, and willing buyer on the terms accepted by the owner.

An open listing need specify no compensation to the selling agent, but may state that the compensation is to be negotiated between the selling agent and the owner.

SEC. 5. Section 1088 of the Civil Code is amended to read:

1088. A listing may not be placed in a multiple listing service unless authorized or directed by the owner in the listing.

If an agent or appraiser places a listing or other information in the multiple listing service , that agent or appraiser shall be responsible for the truth of all representations and statements made by the agent or appraiser of which that agent or appraiser had knowledge or reasonably should have had knowledge to anyone injured by their falseness or inaccuracy.

CHAPTER 332

An act relating to Riverside County Hospital, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. The sum of five hundred thousand dollars ($500,000) is hereby appropriated from the Earthquake Safety and Public Buildings Rehabilitation Fund of 1990 to the Controller for allocation to the County of Riverside for the purpose of relocating the functions of the obstetrics and gynecology unit of the county hospital in the County of Riverside due to substantial earthquake damage. The Controller shall not allocate the funds to the County of Riverside until the county certifies, subject to verification by audit, to the Office of the State Architect that the county has met the 25 percent local matching requirement set forth in subdivision (c) of Section 8878.55 of the Government Code.

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

The structure housing the obstetrics and gynecology unit of the Riverside County Hospital sustained substantial earthquake damage, was determined to be seismically unsafe, and was given a 120-day order to vacate the premises. It is necessary that funds to relocate the essential functions and services provided by that unit of the hospital be provided at the earliest possible time.

CHAPTER 333

An act to add Section 14038.3 to the Government Code, relating to rail transportation.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 14038.3 is added to the Government Code, to read:

14038.3. The department may, if requested by the Alameda Corridor Transportation Authority, exercise the power of eminent domain to acquire, in the name and for the use of, the authority, real property in Los Angeles County that is owned by a railroad corporation and that is necessary, incidental, or convenient for the construction of the Alameda Corridor project.

CHAPTER 334

An act to amend Section 3344.5 of the Civil Code, and to amend Section 115.1 of the Penal Code, relating to campaign materials.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 3344.5 of the Civil Code is amended to read:

3344.5. (a) Any person whose signature is used in violation of, and any candidate for elective office whose election or defeat is expressly advocated in any campaign advertisement that violates, subdivision (b) of Section 115.1 of the Penal Code, shall have a civil cause of action against any person committing the violation.

(b) If a mass mailing or other printed matter that violates subdivision (b) of Section 115.1 of the Penal Code expressly advocates the election or defeat of more than one candidate only a person whose signature is used and the candidate or candidates to whom the unauthorized signature directly relates shall have a civil cause of action pursuant to this section.

(c) Any person bringing a cause of action pursuant to this section may recover damages in an amount of two times the cost of the communication, but not to exceed fifty thousand dollars ($50,000), with regard to which the unauthorized signature was used.

(d) As used in this section, "signature" means either of the following:

(1) A handwritten or mechanical signature, or a copy thereof.

(2) Any representation of a person's name, including, but not limited to, a printed or typewritten representation, that serves the same purpose as a handwritten or mechanical signature.

SEC. 2. Section 115.1 of the Penal Code is amended to read:

115.1. (a) The Legislature finds and declares that the voters of California are entitled to accurate representations in materials that are directed to them in efforts to influence how they vote.

(b) No person shall publish or cause to be published, with intent to deceive, any campaign advertisement containing a signature that the person knows to be unauthorized.

(c) For purposes of this section, "campaign advertisement" means any communication directed to voters by means of a mass mailing as defined in Section 82041.5 of the Government Code, a paid television, radio, or newspaper advertisement, an outdoor advertisement, or any other printed matter, if the expenditures for that communication are required to be reported by Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code.

(d) For purposes of this section, an authorization to use a signature shall be oral or written.

(e) Nothing in this section shall be construed to prohibit a person from publishing or causing to be published a reproduction of all or part of a document containing an actual or authorized signature, provided that the signature so reproduced shall not, with the intent to deceive, be incorporated into another document in a manner that falsely suggests that the person whose signature is reproduced has signed the other document.

(f) Any knowing or willful violation of this section is a public offense punishable by imprisonment in the state prison or in a county jail, or by a fine not to exceed fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(g) As used in this section, "signature" means either of the following:

(1) A handwritten or mechanical signature, or a copy thereof.

(2) Any representation of a person's name, including, but not limited to, a printed or typewritten representation, that serves the same purpose as a handwritten or mechanical signature.

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

CHAPTER 335

An act to amend Section 1596.795 of the Health and Safety Code, relating to child day care.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 1596.795 of the Health and Safety Code is amended to read:

1596.795. (a) The smoking of tobacco in a private residence that is licensed as a family day care home shall be prohibited during the hours of operation as a family day care home and in those areas of the family day care home where children are present. Nothing in this section shall prohibit a city or county from enacting or enforcing an ordinance relating to smoking in a family day care home if the ordinance is more stringent than this section.

(b) The smoking of tobacco on the premises of a licensed day care center shall be prohibited.

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

CHAPTER 336

An act to add Section 1596.846 to the Health and Safety Code, relating to child day care facilities.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 1596.846 is added to the Health and Safety Code, to read:

1596.846. (a) The Legislature finds and declares all of the following:

(1) The American Academy of Pediatrics, after reviewing the data from all the studies, concluded that baby walkers are dangerous

and should be banned from all manufacturing, sale, and distribution in the United States.

(2) A jury in San Mateo County, California has determined that baby walkers are inherently unsafe and are not capable of design changes in order to prevent accidents.

(3) Citing numerous ways in which babies can be injured, Consumer Reports found that, "With a capacity to move as fast as five feet per second, a baby walker can propel your baby faster than you can rescue him."

(4) During the past 15 years, one particular product, a baby walker, has been shown to be associated with increasing numbers of injuries to infants, with the most recent reporting year, 1991, indicating that 27,800 children under the age of two years had to be admitted to an emergency room in the United States for injuries associated with a baby walker.

(b) A baby walker shall not be kept or used on the premises of a child day care facility.

(c) A "baby walker" means any article described in paragraph (4) of subdivision (a) of Section 1500.86 of Part 1500 of Title 16 of the Code of Federal Regulations.

(d) Section 1596.890 shall not apply to this section.

CHAPTER 337

An act to amend Section 2097 of the Fish and Game Code, relating to endangered species, and making an appropriation therefor.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 2097 of the Fish and Game Code is amended to read:

2097. This article shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1999, deletes or extends that date.

CHAPTER 338

An act to amend Section 1191.1 of the Penal Code, relating to sentencing.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 1191.1 of the Penal Code is amended to read:

1191.1. The victim of any crime, or the parents or guardians of the victim if the victim is a minor, or the next of kin of the victim if the victim has died, have the right to attend all sentencing proceedings under this chapter and shall be given adequate notice by the probation officer of all sentencing proceedings concerning the person who committed the crime.

The victim, or up to two of the victim's parents or guardians if the victim is a minor, or the next of kin of the victim if the victim has died, have the right to appear, personally or by counsel, at the sentencing proceeding and to reasonably express his, her, or their views concerning the crime, the person responsible, and the need for restitution. The court in imposing sentence shall consider the statements of victims, parents or guardians, and next of kin made pursuant to this section and shall state on the record its conclusion concerning whether the person would pose a threat to public safety if granted probation.

The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

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

CHAPTER 339

An act to amend Section 1812.84 of the Civil Code, relating to contracts.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 1812.84 of the Civil Code is amended to read:

1812.84. No contract for health studio services shall require payments or financing by the buyer over a period of more than three years, nor shall the term of the contract exceed three years.

CHAPTER 340

An act to add Section 13519.8 to the Penal Code, relating to peace officers.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 13519.8 is added to the Penal Code, to read:

13519.8. (a) The commission shall implement, on or before November 1, 1994, a course or courses of instruction for the training of law enforcement officers in the handling of high-speed vehicle pursuits and shall also develop uniform, minimum guidelines for adoption by California law enforcement agencies for response to high-speed vehicle pursuits. The guidelines and course of instruction shall stress the importance of vehicle safety and protecting the public at all times, include a regular assessment of law enforcement's vehicle pursuit policies, practices, and training, and recognize the need to balance the known offense and the need for immediate capture against the risks to officers and other citizens of a high-speed pursuit.

As used in this section, "law enforcement officer" includes any officer or employee of a local police or sheriff's department or the California Highway Patrol.

(b) The course or courses of basic training for law enforcement officers and the guidelines shall include adequate consideration of each of the following subjects:

(1) When to initiate a pursuit.

(2) The number of involved law enforcement units permitted.

(3) Responsibilities of primary and secondary law enforcement

units.

(4) Driving tactics.

(5) Helicopter assistance.

(6) Communications.

(7) Capture of suspects.

(8) Termination of a pursuit.

(9) Supervisory responsibilities.

(10) Blocking, ramming, boxing, and roadblock procedures.

(11) Speed limits.

(12) Interjurisdictional considerations.

(13) Conditions of the vehicle, driver, roadway, weather, and traffic.

(14) Hazards to uninvolved bystanders or motorists.

(15) Reporting and postpursuit analysis.

(c) All law enforcement officers who have received their basic training before January 1, 1995, shall participate in supplementary training on high-speed vehicle pursuits, as prescribed and certified by the commission.

Local law enforcement agencies are encouraged to include, as part of their advanced officer training program, periodic updates and training on high-speed vehicle pursuit. The commission shall assist where possible.

(d) The course or courses of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of high-speed vehicle pursuits. The groups and individuals shall include, but not be limited to, law enforcement agencies, police academy instructors, subject matter experts, and members of the public.

The commission, in consultation with these groups and individuals, shall review existing training programs to determine the ways in which high-speed pursuit training may be included as part of ongoing programs.

(e) It is the intent of the Legislature that all local law enforcement agencies adopt the minimum guidelines on high-speed vehicle pursuit developed by the commission.

CHAPTER 341

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

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. This act may be cited as the Second Validating Act of 1993.

SEC. 2. As used in this act:

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

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

Air pollution control districts.

Air quality management districts.

Airport districts.

Assessment districts.

Bridge and highway districts.

Bridge, highway, and transportation districts.

California water district distribution districts.

California water district improvement districts.

California water districts.

Cemetery districts.

Citrus pest control districts.

City general improvement district improvement districts.

City general improvement districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.

Community rehabilitation districts.

Community service district improvement districts.

Community service districts.

Conservancy districts.

Cotton pest abatement districts.

County boards of education.

County drainage districts.

County fire protection districts.

County flood control and water districts.

County free library systems.
County maintenance districts.
County power pumping districts.
County sanitation district improvement districts.
County sanitation districts.
County service area improvement areas.
County service areas.
County sewage and water districts.
County water agencies.
County water authorities.
County water district improvement districts.
County water districts.
County waterworks districts.
Crossing guard maintenance districts.
Department of Water Resources and other agencies acting under and pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.
Drainage districts.
Fire protection districts.
Flood control and water conservation districts.
Flood control districts.
Garbage and refuse disposal districts.
Garbage disposal districts.
Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Horticultural development districts.
Horticultural protection districts.
Housing authorities.
Industrial development authorities.
Infrastructure financing districts.
Integrated financing districts.
Irrigation district distribution districts.
Irrigation district improvement districts.
Irrigation districts.
Joint harbor improvement districts.
Joint highway districts.
Joint municipal sewage disposal districts.
Junior college districts.
Levee districts.
Library districts.
Local agency formation commissions.
Local health districts.
Local hospital districts.
Local transportation authorities.

Los Angeles County Transportation Commission.
Metropolitan transit development boards.
Metropolitan water districts.
Mosquito abatement districts.
Mosquito abatement or vector control districts.
Municipal facilities districts.
Municipal improvement assessment districts.
Municipal improvement district improvement districts.
Municipal improvement districts.
Municipal port districts.
Municipal sewer districts.
Municipal utility districts.
Municipal water district improvement districts.
Municipal water districts of any kind.
Parking authorities.
Parking districts.
Park, recreation, and parkway districts.
Permanent road divisions.
Pest abatement districts.
Police protection districts.
Port districts.
Project areas of redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility district improvement districts.
Public utility districts.
Rapid transit authorities.
Rapid transit districts.
Reclamation districts.
Recreational harbor districts.
Recreation and park districts.
Recreation, park, and parkway districts.
Redevelopment agencies.
Regional justice facility financing agencies.
Regional open-space districts.
Regional park and open-space districts.
Regional park districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.
Road districts.
Sanitary agencies.
Sanitary districts.
Sanitary districts annexed areas.
School districts of any kind or class.
Separation of grade districts.
Service authorities for freeway emergencies.

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

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

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

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

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

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

SEC. 3. All public bodies heretofore organized or existing under,

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

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

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

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

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

of issuing bonds for any public purpose, such bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with such authorization, shall be the legal, valid, and binding obligations of the public body.

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

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

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

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

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

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

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into

immediate effect. The facts constituting the necessity are:

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

CHAPTER 342

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

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. This act may be cited as the Third Validating Act of 1993.

SEC. 2. As used in this act:

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

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

Air pollution control districts.

Air quality management districts.

Airport districts.

Assessment districts.

Bridge and highway districts.

Bridge, highway, and transportation districts.

California water district distribution districts.

California water district improvement districts.

California water districts.

Cemetery districts.

Citrus pest control districts.

City general improvement district improvement districts.

City general improvement districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.

Community rehabilitation districts.

Community service district improvement districts.

Community service districts.

Conservancy districts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 9. Nothing contained in this act shall be construed to render the creation of any city or district, or any change in the boundaries of any city or district, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be

filed under Sections 54900 to 54904, inclusive, of the Government Code, is filed within the time and substantially in the manner required by those sections.

CHAPTER 343

An act to amend Section 11423 of the Business and Professions Code, relating to real estate.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 11423 of the Business and Professions Code is amended to read:

11423. (a) For purposes of this section:

(1) "Applicant" means a person who has made a written request for an extension of credit which is proposed to be secured by real property. The term does not include a guarantor, surety, or other person who will not be directly liable on the loan.

(2) "Appraisal" shall have the same meaning as set forth in subdivision (b) of Section 11302.

(3) "Residential real property" means real property located in the State of California containing only a one-to-four family residence.

(b) A lender in a loan transaction secured by real property shall provide notice as described in this section to a loan applicant of the applicant's right to receive a copy of the appraisal, provided he or she has paid for the appraisal.

An applicant's written request for a copy of an appraisal must be received by the lender no later than 90 days after (1) the lender has provided notice of the action taken on the application, including a notice of incompleteness, or (2) the application has been withdrawn.

(c) The lender shall mail or deliver a copy of an appraisal within 15 days after receiving a written request from the applicant, or within 15 days after receiving the appraisal, whichever occurs later.

(d) Where the loan is proposed to be secured by residential real property, the notice of the applicant's right to a copy of the appraisal as provided in subdivision (b) shall be given in at least 10-point boldface type, as a separate document in a form that the applicant may retain, and no later than 15 days after the lender receives the written application. The notice shall specify that the applicant's request for the appraisal must be in writing and must be received by the lender no later than 90 days after the lender provides notice of the action taken on the application or a notice of incompleteness, or in the case of a withdrawn application, 90 days after the withdrawal. An address to which the request should be sent shall be specified in the notice. Release of the appraisal to the applicant may be

conditioned upon payment of the cost of the appraisal.

(e) Where the loan is proposed to be secured by nonresidential real property, the notice of the applicant's right to a copy of the appraisal shall be given within 15 days of receiving the appraisal. The notice shall specify that the applicant's request for a copy of the appraisal must be in writing and that the request must be made within the time specified in subdivision (b) and that the applicant is only entitled to receive the appraisal or appraisals obtained by the lender for the purpose of evaluating the applicant's pending request for an extension of credit. Release of the appraisal to the applicant may be conditioned upon payment of the cost of the appraisal and the cost of duplicating the appraisal.

(f) Nothing in this section is intended to effect a change in current law in any manner with respect to reliance on an appraisal by anyone other than the lender who released the appraisal.

(g) This section does not apply to appraisals obtained by lenders on property owned by the lender, nor to appraisals obtained by the lender in anticipation of modifying any existing loan agreement if the lender has not charged for the appraisal.

(h) In the case of loans secured by residential real property, compliance with Regulation B (12 CFR Part 202 et seq.) of the Federal Reserve Board is deemed to be compliance with the provisions of this section and Section 10241.3.

(i) This section is in addition to any right of access to appraisals that exists under any other provision of state or federal law.

CHAPTER 344

An act to add Section 1346.1 to the Penal Code, relating to criminal procedure.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 1346.1 is added to the Penal Code, to read:

1346.1. (a) When a defendant has been charged with a violation of Section 262 or subdivision (a) of Section 273.5, the people may apply for an order that the victim's testimony at the preliminary hearing, in addition to being stenographically recorded, be recorded and preserved on videotape.

(b) The application for the order shall be in writing and made three days prior to the preliminary hearing.

(c) Upon timely receipt of the application, the magistrate shall order that the testimony of the victim given at the preliminary hearing be taken and preserved on videotape. The videotape shall be transmitted to the clerk of the court in which the action is

pending.

(d) If the victim's prior testimony given at the preliminary hearing is admissible pursuant to the Evidence Code, then the videotape recording of that testimony may be introduced as evidence at trial.

CHAPTER 345

An act to amend Section 166 of the Penal Code, relating to domestic violence.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 166 of the Penal Code is amended to read:

166. (a) Except as provided in subdivision (b), every person guilty of any contempt of court, of any of the following kinds, is guilty of a misdemeanor:

(1) Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(2) Behavior as specified in paragraph (1) committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

(3) Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court.

(4) Willful disobedience of any process or order lawfully issued by any court.

(5) Resistance willfully offered by any person to the lawful order or process of any court.

(6) The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

(7) The publication of a false or grossly inaccurate report of the proceedings of any court.

(8) Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of the court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as provided in this code.

(b) (1) Notwithstanding paragraph (4) of subdivision (a), any willful and knowing violation of any protective order or stay away court order issued pursuant to Section 136.2, in a pending criminal

proceeding involving domestic violence, as defined in Section 13700, or issued as a condition of probation after a conviction in a criminal proceeding involving domestic violence, as defined in Section 13700, which is an order described in paragraph (3), shall constitute contempt of court, a misdemeanor, punishable by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and the fine.

(2) If a violation of paragraph (1) results in a physical injury, the person shall be imprisoned in a county jail for at least 48 hours, whether a fine or imprisonment is imposed, or the sentence is suspended.

(3) Paragraphs (1) and (2) shall apply to the following court orders:

(A) An order enjoining any party from molesting, attacking, striking, threatening, sexually assaulting, battering, harassing, contacting repeatedly by mail with the intent to harass, or disturbing the peace of the other party, or other named family and household members.

(B) An order excluding one party from the family dwelling or from the dwelling of the other.

(C) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the orders described in paragraph (1).

(4) A second or subsequent conviction for a violation of any order described in paragraph (1) occurring within seven years of a prior conviction for a violation of any of those orders and involving an act of violence or "a credible threat" of violence, as provided in subdivisions (c) and (d) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months or two or three years.

(5) The prosecuting agency of each county shall have the primary responsibility for the enforcement of the orders described in paragraph (1).

(c) (1) If probation is granted upon conviction of a violation of subdivision (b), the court shall require participation in a batterer's treatment program as a condition of probation, unless, considering all of the facts and circumstances, the court finds participating in a batterer's treatment program inappropriate for the defendant.

(2) If probation is granted upon conviction of a violation of subdivision (b), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars ($1,000).

(B) That the defendant provide restitution to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(3) For any order to pay a fine, make payments to a battered

women's shelter, or pay restitution as a condition of probation under this subdivision or subdivision (b), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support.

(4) Where the injury to a married person is caused in whole or part by the criminal acts of his or her spouse in violation of subdivision (b), the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, or to a shelter for costs with regard to the injured spouse and dependents, required by this subdivision, until all separate property of the offending spouse is exhausted.

(5) Any person violating any order described in subdivision (b), may be punished for any substantive offenses described under Section 136.1 or 646.9. No finding of contempt shall be a bar to prosecution for a violation of Section 136.1 or 646.9. However, any person held in contempt for a violation of subdivision (b) shall be entitled to credit for any punishment imposed as a result of that violation against any sentence imposed upon conviction of an offense described in Section 136.1 or 646.9. Any conviction or acquittal for any substantive offense under Section 136.1 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the same act.

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

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

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

CHAPTER 346

An act to amend Sections 11165.4, 11165.5, and 11165.6 of the Penal Code, relating to child abuse reporting.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 11165.4 of the Penal Code is amended to read:

11165.4. As used in this article, "unlawful corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. It also does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

SEC. 2. Section 11165.5 of the Penal Code is amended to read:

11165.5. As used in this article, "abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect, or unlawful corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. "Abuse in out-of-home care" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

SEC. 3. Section 11165.6 of the Penal Code is amended to read:

11165.6. As used in this article, "child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (unlawful corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article. "Child abuse" does not mean a mutual affray between minors. "Child abuse" does not include an injury caused by

reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 347

An act to amend Section 56826 of the Government Code relating to local government.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 56826 of the Government Code is amended to read:

56826. (a) The commission shall not review a reorganization which includes an annexation to any city in Santa Clara County of unincorporated territory which is within the urban service area of the city if the reorganization is initiated by resolution of the legislative body of the city.

(b) The city council shall be the conducting authority for the reorganization and the proceedings for the reorganization shall be initiated and conducted as nearly as may be practicable in accordance with Part 4 (commencing with Section 57000).

The city council, in adopting the resolution approving the reorganization, shall make all of the following findings:

(1) That the unincorporated territory is within the urban service area of the city as adopted by the commission.

(2) That the county surveyor has determined the boundaries of the proposal to be definite and certain, and in compliance with the road annexation policies of the commission. The city shall reimburse the county for the actual costs incurred by the county surveyor in making this determination.

(3) That the proposal does not split lines of assessment or ownership.

(4) That the proposal does not create islands or areas in which it would be difficult to provide municipal services.

(5) That the proposal is consistent with the adopted general plan

of the city.

(6) That the territory is contiguous to existing city limits.

(7) That the city has complied with all conditions imposed by the commission for inclusion of the territory in the urban service area of the city.

(c) All reorganizations which involve territory for which the land use designation in the general plan of the city has changed from the time that the urban service area of the city was last adopted by the commission, and which are processed by a city pursuant to this section shall be subject to an appeal to the commission upon submission of a petition of appeal, signed by at least 50 registered voters in the county.

(d) An appeal to the commission may also be made by submission of a resolution of appeal adopted by the legislative body of a special district solely for the purpose of determining whether some or all of the territory contained in the reorganization proposal should also be annexed or detached from that special district.

(e) Any petition submitted under subdivision (c) or resolution submitted under subdivision (d) shall be submitted to the executive officer within 15 days of the adoption by the city council of the resolution approving the annexation. The executive officer shall schedule the hearing for the next regular meeting of the commission as is practicable. The commission may set a reasonable appeal fee.

CHAPTER 348

An act to add Section 17533.6 to the Business and Professions Code, relating to business solicitations.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 17533.6 is added to the Business and Professions Code, to read:

17533.6. It is unlawful for any person, firm, corporation, or association that is a nongovernmental entity to solicit information, or to solicit the purchase of or payment for a product or service, or to solicit the contribution of funds or membership fees, by means of a mailing that contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any state or local government connection, approval or endorsement, unless:

(a) The nongovernmental entity has an expressed connection with, or the approval or endorsement of, a state or local government entity, if permitted by other provisions of law.

(b) The solicitation bears on its face, in conspicuous and legible

type in contrast by typography, layout, or color with other printing on its face, the following notice: "THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY ANY GOVERNMENT AGENCY, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE GOVERNMENT."

(c) The envelope or outside cover or wrapper in which the matter is mailed bears on its face in capital letters and in conspicuous and legible type, the following notice: "THIS IS NOT A GOVERNMENT DOCUMENT."

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

CHAPTER 349

An act to repeal Section 69503.4 of the Government Code, relating to courts.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 69503.4 of the Government Code is repealed.

CHAPTER 350

An act to amend Sections 9501, 9504, 9507, 9508, 9509, 9580, 9625, 9626, 9627, 9629, 9630, 9631, 9632, 9633, 9635, 9636, 9637, 9638, 9642, 9643, 9644, 9645, 9646, and 9647 of, to repeal Section 9511.1 of, and to repeal Article 3 (commencing with Section 9650) of Chapter 5 of Part 5 of Division 8 of, the Health and Safety Code, relating to mausoleums and columbariums.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 9501 of the Health and Safety Code is amended to read:

9501. This part shall be known and may be cited as the Mausoleum and Columbarium Law.

SEC. 2. Section 9504 of the Health and Safety Code is amended to read:

9504. "Mausoleum" includes any building or structure, used or intended to be used, for the interment of human remains. A columbarium may be built within a mausoleum.

SEC. 3. Section 9507 of the Health and Safety Code is amended to read:

9507. "Uniform Building Code" means the 1991 Edition of the Uniform Building Code, with 1992 amendments, adopted and published by the International Conference of Building Officials.

SEC. 4. Section 9508 of the Health and Safety Code is amended to read:

9508. "The Uniform Plumbing Code" means the 1991 Edition of the Plumbing Code, with 1992 amendments, adopted and published by the International Association of Plumbing and Mechanical Officials.

SEC. 5. Section 9509 of the Health and Safety Code is amended to read:

9509. "National Electrical Code" means the 1990 Edition of the National Electrical Code, with 1992 amendments, adopted and published by the National Fire Protection Association.

SEC. 6. Section 9511.1 of the Health and Safety Code is repealed.

SEC. 7. Section 9580 of the Health and Safety Code is amended to read:

9580. Every permit or approval under which no work is done within one year from the date of issuance expires by limitation and a new permit shall be obtained before the work may proceed.

SEC. 8. Section 9625 of the Health and Safety Code is amended to read:

9625. Every mausoleum or columbarium shall be designed and constructed to conform to the earthquake provisions of the Uniform Building Code.

SEC. 9. Section 9626 of the Health and Safety Code is amended to read:

9626. Except as otherwise provided in this chapter, all materials used in the construction, ornamentation, or embellishment of mausoleums or columbariums shall be incombustible. This section shall not apply to crypt vents, temporary openings or partitions, interior doors, fixtures, furniture, or furnishings.

SEC. 10. Section 9627 of the Health and Safety Code is amended

to read:

9627. All structural framework shall be of cast-in-place reinforced concrete, or of structural steel sections, or of concrete over metal decking; provided, however, all footings, bearing walls, floor slabs and roofs shall be of cast-in-place reinforced concrete or of concrete over metal decking only. All structural framework shall be designed and constructed in accordance with the Uniform Building Code.

SEC. 11. Section 9629 of the Health and Safety Code is amended to read:

9629. Footings shall be designed and constructed to conform to the requirements of the Uniform Building Code or specifications of a licensed geotechnical engineer.

SEC. 12. Section 9630 of the Health and Safety Code is amended to read:

9630. Floor slabs placed on earth shall be constructed of reinforced concrete designed by a licensed structural or civil engineer to include control joints at appropriate intervals to minimize cracks as well as appropriate vapor and moisture barriers as specified by a licensed geotechnical engineer.

SEC. 13. Section 9631 of the Health and Safety Code is amended to read:

9631. Where any wall is constructed against a bank of earth, rock, or other porous material, or where crypts are adjacent to an outside building wall below grade, the wall shall be adequately waterproofed. Before backfilling, a waterproofed wall shall have a protection board placed against it to prevent damage to the waterproofing during backfilling.

SEC. 14. Section 9632 of the Health and Safety Code is amended to read:

9632. Except as provided in Section 9633, all crypt walls and crypt floor slabs shall be constructed of cast-in-place, reinforced concrete; crypt walls shall conform to structural design but shall be not less than three and one-half inches in thickness, and crypt floor slabs shall be not less than three inches in thickness.

SEC. 15. Section 9633 of the Health and Safety Code is amended to read:

9633. Horizontal and vertical partitions separating crypts comprising companion crypts or a nest of crypts entered through a single crypt opening may be constructed of precast reinforced concrete; provided, the horizontal partitions are not less than one and one-half inches in thickness and the vertical nonbearing partitions are not less than one inch in thickness, and vertical partitions bearing any load are not less than three inches in thickness, and provided the crypt walls enclosing the nest of crypts are constructed as required in Section 9632. Crypts shall be vented at roof level of the structure, and vents shall continue to a gravel filled trench below the floor of the bottom crypt to provide adequate circulation of air. Nonstructural horizontal and vertical partitions separating columbarium niches may be constructed of precast

reinforced concrete or other incombustible material.

SEC. 16. Section 9635 of the Health and Safety Code is amended to read:

9635. (a) All individual crypt openings shall be sealed with a solid panel of precast concrete, not less than 1 ½ inches thick, fiber reinforced cement board not less than 7/16 inch thick, or other incombustible material that meets all of the following requirements:

(1) A minimum density of 80 pounds per cubic foot.

(2) A minimum modulus of rupture of 270 pounds per square inch.

(3) A minimum compressive strength of 2500 pounds per square inch.

(4) A rating that conforms to Underwriters Laboratories fire hazard class 1.

(b) All panels shall be securely set in with a high quality, nonflammable, resilient, and nonhardening urethane, silicone base, or other appropriate sealant for permanent sealing after interment is made in the crypt. Seal panels shall be set independent of crypt fronts.

SEC. 17. Section 9636 of the Health and Safety Code is amended to read:

9636. All marble floors shall be constructed on a bed of mortar or mastic placed on the floor subslab, with an approved additive to retard efflorescence.

SEC. 18. Section 9637 of the Health and Safety Code is amended to read:

9637. All interior or exterior veneers shall be of stone, cast stone, granite, travertine, or marble, or other material allowed in the Uniform Building Code for type I construction. Cast stone shall meet all requirements for cast stone set forth in the Uniform Building Code.

SEC. 19. Section 9638 of the Health and Safety Code is amended to read:

9638. Material for exterior trim, including exterior crypt and niche fronts, shall be travertine, serpentine marble, or grade A exterior type marble or granite, only.

SEC. 20. Section 9642 of the Health and Safety Code is amended to read:

9642. All base, architraves, wainscoting and all other vertical work other than crypt fronts shall be securely anchored in place with rods, clips, or other suitable anchoring devices of materials as specified in Section 9643. All clips shall be countersunk into the joint surface and set in nonstaining cement or epoxy.

SEC. 21. Section 9643 of the Health and Safety Code is amended to read:

9643. All interior and exterior fastenings for hangers, clips, doors, and other objects shall be of copper base alloy, aluminum, copper or stainless steel of adequate gauges and shall be installed to meet or exceed the seismic requirements of the Uniform Building Code.

SEC. 22. Section 9644 of the Health and Safety Code is amended

to read:

9644. All exterior materials used for doors, window frames, skylights, gutters, downspouts, flashings or embellishment shall be of copper, copper base alloy, aluminum, stainless steel, or other corrosion resistant material of gauges structurally determined.

SEC. 23. Section 9645 of the Health and Safety Code is amended to read:

9645. In the event that during a national emergency, as proclaimed by the Governor for purposes of this section, none of the materials listed in Sections 9643 and 9644 are obtainable, the department may permit the use of galvanized iron or other durable materials.

SEC. 24. Section 9646 of the Health and Safety Code is amended to read:

9646. Roofs shall be constructed of cast-in-place reinforced concrete, and any roof covering shall be "Fire Retardant" in conformity with the requirements of type I construction.

SEC. 25. Section 9647 of the Health and Safety Code is amended to read:

9647. All skylight frames shall be fabricated in conformance with structural requirements, and shall contain wire glass, tempered glass, or plastic of comparable strength and durability.

SEC. 26. Article 3 (commencing with Section 9650) of Chapter 5 of Part 5 of Division 8 of the Health and Safety Code is repealed.

SEC. 27. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 351

An act to add Section 2891.2 to the Public Utilities Code, relating to telephones.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 2891.2 is added to the Public Utilities Code, to read:

2891.2. Telephone subscribers shall be annually notified that use

of an "800" or "900" telephone number may result in the disclosure of the subscriber's telephone number to the called party. The commission shall, by rule or order, impose the responsibility for the notification with the telephone corporation that offers the caller identification service, often known as automatic number identification, in connection with an "800" or "900" service.

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

CHAPTER 352

An act to amend Sections 1777, 1790, and 1792.2 of the Health and Safety Code, relating to continuing care contracts.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 1777 of the Health and Safety Code is amended to read:

1777. (a) The Committee on Continuing Care Contracts of the State Social Services Advisory Board shall act in an advisory capacity to the department on matters relating to continuing care contracts.

(b) The members of the committee shall include:

(1) Three representatives of nonprofit providers of continuing care contracts pursuant to this chapter, each of whom shall have offered continuing care services for at least five years prior to appointment.

(2) Three senior citizens who are not eligible for appointment pursuant to paragraphs (1) and (4) who shall represent consumers of continuing care services, at least two of whom shall be residents of continuing care retirement communities.

(3) A certified public accountant with experience in the community care industry, who is not a provider of continuing care services.

(4) One representative of a for profit provider of continuing care contracts pursuant to this chapter.

(5) An actuary.

(c) Committee members shall be appointed pursuant to Section

10700 of the Welfare and Institutions Code, except that the Senate Rules Committee shall appoint one member pursuant to paragraph (2) of subdivision (b) and the Speaker of the Assembly shall appoint one member pursuant to paragraph (2) of subdivision (b).

SEC. 2. Section 1790 of the Health and Safety Code is amended to read:

1790. (a) Each provider, that has obtained a provisional or final certificate of authority, shall submit an annual report of its financial condition. The report shall consist of audited financial statements with an accompanying certified public accountant's opinion thereon, reserve calculations, resident listings, evidence of surety bond, and certification that the contract in use for new residents has been approved by the department, all in a format provided by the department, and shall include all of the following information:

(1) A certification, if applicable, that the entity is maintaining reserves for prepaid continuing care contracts, statutory reserves, and refund reserves.

(2) Full details on the status of reserves and on per capita costs of operation for each facility operated.

(3) Full details on any increase in monthly care fees, the basis for determining the increase, and the data used to calculate the increase.

(4) Any other information as the department may require.

(b) Each provider shall file the annual report with the department within four months after the end of the fiscal year of that provider.

(c) The annual report and any amendments thereto shall be signed and certified by the chief executive officer of the provider, stating that, to the best of his or her knowledge and belief, the items are correct.

(d) A copy of the most recent annual audited financial statement shall be transmitted by the provider to each transferor requesting the statement.

(e) A provider shall amend its annual report on file with the department at any time, without the payment of any additional fee, if an amendment is necessary to prevent the report from containing a material misstatement of fact or omitting a material fact.

(f) If a provider is no longer entering into continuing care contracts, and currently is caring for 10 or fewer continuing care residents, the provider may request permission from the department, in lieu of filing the annual report, to establish a trust fund or to secure a performance bond to ensure fulfillment of continuing care contract obligations.

SEC. 3. Section 1792.2 of the Health and Safety Code is amended to read:

1792.2. (a) Any entity that has executed or assumed continuing care contracts shall maintain reserves covering obligations thereunder.

(b) The following assumptions shall be used when calculating the reserves:

(1) The following table of mortality shall be used in connection with all continuing care contracts:

Age	Females	Males	Age	Females	Males
62	23.392	17.803	82	9.233	7.301
63	22.653	17.289	83	8.713	6.899
64	21.911	16.769	84	8.221	6.500
65	21.167	16.244	85	7.758	6.109
66	20.418	15.715	86	7.335	5.755
67	19.666	15.180	87	6.930	5.432
68	18.910	14.642	88	6.525	5.117
69	18.153	14.099	89	6.128	4.818
70	17.394	13.553	90	5.762	4.551
71	16.636	13.004	91	5.437	4.310
72	15.878	12.452	92	5.126	4.079
73	15.117	11.897	93	4.829	3.859
74	14.387	11.340	94	4.546	3.649
75	13.663	10.780	95	4.276	3.449
76	12.954	10.217	96	4.019	3.258
77	12.293	9.661	97	3.776	3.077
78	11.635	9.146	98	3.544	2.905
79	10.998	8.653	99	3.325	2.742
80	10.391	8.173	100	3.118	2.587
81	9.803	7.717			

The department shall adopt regulations to update the table of mortality set forth in this paragraph by January 1, 1996. The table of mortality set forth in this paragraph shall be inoperative when the department adopts regulations that update the table.

(2) A zero life expectancy shall be used for residents over 100 years of age in computing the statutory reserve requirements.

(3) A zero interest assumption shall be used to adjust resident life expectancies in conjunction with the computation of the statutory reserve requirement.

(c) The reserves shall be calculated by progressing through each of the following steps:

(1) Compute net cash per capita costs:

(A) Cash operating expenses: Obtain total operating expenses from the audited income statements. Deduct (i) depreciation and other noncash expenses, (ii) processing fees, (iii) community services, (iv) expenses that will not be incurred in future years, (v) reimbursements for services to nonresidents, (vi) donated services, if included as an operating expense on the income statement, (vii) investment income, (viii) contributions received, and (ix) other items that the facility reasonably believes should be deducted with accompanying explanation. For a facility in its first year of operation or following a major addition to an existing facility, cash operating expenses for calculating reserve requirements may be classified as fixed or variable and totaled separately.

(B) Mean number of residents by level of care: List the number of residents for each level of care separately at the beginning of the fiscal year. Add the number of residents for each level of care separately at the end of the fiscal year. Divide the total for each level of care by two.

(C) Total mean number of residents: Add the total number of residents at the beginning of the fiscal year to the total number of residents at the end of the fiscal year and divide by two. For facilities wherein resident population fluctuates significantly from month to month and for facilities in their first year of operation, the mean number of residents by level of care or the total mean number, may be computed by adding the number of residents at the end of each month in the fiscal year and dividing by the total number of months included. The daily attendance for the fiscal year may also be used to determine the mean number of residents.

(D) Net cash per capita cost: Cash operating expenses divided by the mean number of residents. It is acceptable, but not required, to compute net cash per capita for various levels of care, based on allocated expenses and contributions from consolidated financial statements. Allocation methods shall be subject to the approval of the department, and schedules shall be prepared for all levels of care, including any levels not covered by life care contracts. For a facility in its first year of operation or following a major addition to an existing facility, net cash per capita cost for calculating reserve requirements may be the sum of the figures determined by dividing fixed cash operating expenses by the number of residents at the end of the fiscal year, and dividing variable cash operating expenses by the mean number of residents.

(2) Compute projected life cost:

(A) Compute aggregate life expectancies: For each resident, compare age against the table of mortality and total all life expectancies.

(B) Multiply net cash per capita costs by aggregate life expectancies.

(3) Compute five-year plan residents: Determine the maximum annual total of SSI/SSP payments for the year of entry for each resident. If that amount is greater than the amount of the entrance fee paid by a resident, the resident is designated a "Five-year Plan Resident" and the entrance fee is amortized over five years. No reserves are required for these residents after the fifth year.

(4) Compute projected life revenue:

(A) Annual fee: Multiply by 12 each monthly fee paid by residents, including payments to be made by third-party payers on behalf of the resident, including SSI/SSP and Medi-Cal, and contributions, donations, or endowments, that the provider actually used for operating expenditures for continuing care contracts during the fiscal year.

(B) Continuing care residents requiring full reserves: Enter the number of continuing care residents for each annual fee, excluding

five-year plan residents.

(C) Aggregate life expectancies: For each resident, compare age against the table of mortality and total all life expectancies for each annual fee.

(D) Total projected life revenue: Multiply each annual fee by aggregate life expectancies. Total the products obtained.

(5) Compute statutory reserve:

(A) Reserves not including five-year plan residents: Deduct the projected life revenue from the projected life cost. If the remainder is less than zero, use zero.

(B) Total statutory reserves: Add the total unamortized balance for five-year plan residents to the remainder in paragraph (A) above.

(6) Compute liquid asset portion of statutory reserve: For providers that have executed monthly fee contracts with at least one-half of the residents, compute 5 percent of the total statutory reserves. For providers that have executed prepaid contracts with at least one-half of the residents, compute 25 percent of the total statutory reserves.

(d) At least 25 percent of the statutory reserve shall consist of liquid assets, as defined in paragraph (9) of subdivision (e), except that a 5 percent requirement shall apply to the facilities that have executed monthly fee contracts with at least 50 percent of the residents.

(e) The assets available for reserves shall consist of the following:

(1) Deposits in commercial and savings accounts with California banks that are members of the Federal Deposit Insurance Corporation.

(2) Investments in certificates issued by California savings and loan associations that are members of the Federal Deposit Insurance Corporation, and have been licensed or chartered to operate, and have conducted business in the State of California for a continuous period of five years or more.

(3) Notes receivable by the facility, that are secured by first deeds of trust and first mortgages on property not owned by the provider or its affiliates.

(4) Stocks, bonds, and securities, at current market value unless otherwise specified, shall meet the following criteria to be approved as assets available for statutory reserves:

(A) Highly liquid money securities, including, but not limited to, United States Treasury Bills, prime banker's acceptances, negotiable time certificates of deposit, and short-term tax-exempt notes.

(B) Common stocks rated "above average" or higher by any national rating agency. For example, a rating of A+, A, A- by Standard and Poor's Corporation is required for common stock.

(C) Bonds issued by the United States government or federal agencies.

(D) Nonfederal bonds that have a current rating of at least "A" by Moody's Investors Service, Standard and Poor's Corporation, or Fitch Investors Service, and are listed on a national securities

exchange.

(E) Bonds that are not listed on a national securities exchange, but are traded over-the-counter and have a current rating of at least "Aa" by Moody's Investors Service or at least "AA" by Standard and Poor's Corporation or Fitch's Investors Service.

(F) The security interest in the cash surrender value of life insurance policies assigned by residents to the facility.

(5) Stocks, bonds, and securities that do not meet the approval criteria may be retained as part of the reserves with the specific approval of the department. If necessary to meet reserve requirements, stocks, bonds, and securities that are not approved by the department may be disposed of in a gradual manner, to avoid loss to certificate holders.

(6) Real estate used to provide care and housing for holders of continuing care contracts, or real estate, or equities therein, owned by the entity as an investment, the rents from which are used to discharge obligations to holders of continuing care contracts or to reinvest as a part of the reserves. These investments may be located outside the State of California.

(A) The value of this real estate shall be based on 70 percent of the net equity thereof, which shall be the book or appraised value less any depreciation and encumbrances.

(B) The provider shall request the department's prior written approval of proposed appraisers other than the county assessor or a member of the American Institute of Real Estate Appraisers.

(C) All appraisals shall show the basis and method of valuation. The department may require technical reports to be verified or certified, or both. The expense of any technical reports or any verifications thereof shall be borne by the provider.

(7) Seventy percent of the net equity in furniture and equipment situated on property used to provide care and housing for holders of continuing care contracts.

(8) Investment certificates or shares in open end investment trusts, that meet all of the following requirements:

(A) The trust management shall have experience either managing another mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), or have been registered as an investment adviser under the Investment Advisors Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.), and in either case shall currently have at least one hundred million dollars ($100,000,000) under its supervision.

(B) Qualified for sale in California.

(C) Has at least 40 percent of its directors or trustees not affiliated with the fund's management company or principal underwriter or any of their affiliates.

(D) Is registered under the Investment Company Act of 1940.

(E) Is a fund listed as qualifying under rules maintained by the Commissioner of Corporations in cooperation with the Department of Insurance.

(9) Liquid assets, if any, shall consist of the following:

(A) Listed bonds, stocks, commercial and savings accounts, and savings and loan certificates.

(B) A sinking fund comprised of liquid assets, if it is a replacement fund subject to disbursement for items, including, but not limited to, payment of principal and interest on the mortgage or for operations during the succeeding year. Replacement funds, that may only be used for capital improvements or repairs, shall not be included in liquid reserves.

(10) Deposits made prior to signing a continuing care contract represent liabilities and shall be offset against liquid assets, if any, otherwise against any other assets.

(11) Deposits that represent funds turned over to the facility by residents for safekeeping without relinquishing control thereof shall be offset against liquid assets, if any, otherwise against other assets.

CHAPTER 353

An act to amend Section 25755 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 25755 of the Business and Professions Code is amended to read:

25755. (a) The director and the persons employed by the department for the administration and enforcement of this division are peace officers in the enforcement of the penal provisions of this division, the rules of the department adopted under the provisions of this division, and any other penal provisions of law of this state prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding, or mislabeling of alcoholic beverages or intoxicating liquors, and these persons are authorized, while acting as peace officers, to enforce any penal provisions of law while in the course of their employment.

(b) The director, the persons employed by the department for the administration and enforcement of this division, peace officers listed in Section 830.1 of the Penal Code, and those officers listed in Section 830.6 of the Penal Code while acting in the course and scope of their employment as peace officers may, in enforcing the provisions of this division, visit and inspect the premises of any licensee at any time during which the licensee is exercising the privileges authorized by his or her license on the premises.

(c) Members of the California State Police Division and peace officers of the Department of Parks and Recreation, as defined in

subdivisions (b) and (g) of Section 830.2 of the Penal Code, may, in enforcing the provisions of this division, visit and inspect the premises of any licensee located on state property at any time during which the licensee is exercising the privileges authorized by his or her license on the premises.

(d) Any agents assigned to the Drug Enforcement Narcotics Team by the director shall have successfully completed a four-week course on narcotics enforcement approved by the Commission on Peace Officer Standards and Training. In addition, all other agents of the department shall successfully complete the four-week course on narcotics enforcement approved by the Commission on Peace Officer Standards and Training by June 1, 1995.

CHAPTER 354

An act to amend Section 16809.3 of the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 16809.3 of the Welfare and Institutions Code is amended to read:

16809.3. (a) Beginning in the 1991–92 fiscal year, and in each fiscal year thereafter, a county shall pay the amount listed below to the department as a condition of participation in the County Medical Services Program administered pursuant to Section 16809:

Jurisdiction	Amount
Alpine	$ 661
Amador	17,107
Butte	459,610
Calaveras	30,401
Colusa	28,997
Del Norte	39,424
El Dorado	233,492
Glenn	33,989
Humboldt	430,851
Imperial	249,786
Inyo	18,950
Kings	195,053
Lassen	17,206
Madera	151,434
Marin	576,233
Mariposa	5,649

Modoc	9,688
Mono	25,469
Napa	142,767
Nevada	42,051
Plumas	23,796
San Benito	37,018
Shasta	294,369
Sierra	6,183
Siskiyou	48,956
Solano	809,548
Sonoma	718,947
Sutter	188,781
Tehama	79,950
Trinity	8,319
Tuolumne	34,947
Yuba	101,907

(b) Beginning in the 1991–92 fiscal year and in each fiscal year thereafter, counties which did not contract with the department pursuant to Section 16709 during the 1990–91 fiscal year shall pay the following amount to the department as a condition of participation in the County Medical Services Program, administered pursuant to Section 16809:

Jurisdiction	Amount
Lake	$150,278
Mendocino	247,578
Merced	488,954
Placer	247,193
San Luis Obispo	358,571
Santa Cruz	678,868
Yolo	532,510

(c) County amounts specified in subdivisions (a) and (b) shall be paid to the department in 12 equal monthly payments according to the procedures specified by the department. A county which does not pay the amounts specified in subdivision (a) or (b) may be terminated from participation in the program.

(d) The payments required by subdivision (c) shall not be paid for with funds from the health account of the local health and welfare trust fund established pursuant to Section 17600.10.

(e) The department shall reduce the amounts specified in subdivision (b) if the revenue authority provided for in either Section 29550 of the Government Code, or Section 97 of the Revenue and Taxation Code, or both, which is effective on or after September 1, 1991, is reduced by enactment of legislation or by judicial order, unless those county general purpose revenues are replaced in the 1991–92 fiscal year and subsequent fiscal years by county general purpose revenue authority which, when added to the remaining revenue authority, will be equal to the revenue authority made

available to the counties during the 1991–92 fiscal year.

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

In order to apply the provisions of this act to the entire 1992-93 fiscal year, and so facilitate the orderly administration of the human services funding system, it is necessary that this act take effect immediately.

CHAPTER 355

An act to amend Section 10101 of the Public Contract Code, relating to state contracts.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 10101 of the Public Contract Code is amended to read:

10101. (a) Contracts for the purchase of supplies or materials, which are purchased pursuant to Chapter 2 (commencing with Section 10290), Part 2, Division 2, of the Public Contract Code, are not subject to this part, even though the seller is required to perform some incidental work or service in connection with the delivery of the material or supplies.

(b) Contracts for which emergency work or remedial measures are required are not subject to this part if the work or remedial measures are necessary to immediately avert, alleviate, repair, or mitigate destruction of property caused by the accidental or unplanned release of toxic substances and are necessary to protect the health, safety, and welfare of the general public.

CHAPTER 356

An act to amend Section 1703 of, to add Section 1180.1 to, and to add Article 8 (commencing with Section 1870) to Chapter 7 of Part 1 of Division 1 of, the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 1180.1 is added to the Unemployment Insurance Code, to read:

1180.1. No claim for refund of amounts paid pursuant to Section 1870 may be filed.

SEC. 2. Section 1703 of the Unemployment Insurance Code is amended to read:

1703. (a) If any employing unit or other person fails to pay any amount imposed under this division at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs, shall be a perfected and enforceable state tax lien. This lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For purposes of this section, amounts are "due and payable" on the following dates:

(1) For amounts disclosed on a return received by the director, the date of the notice by the director to the taxpayer of the amount due.

(2) For penalties imposed pursuant to Sections 1112.5, 1114, and 13052.5, the date of the notice by the director to the taxpayer of the amount due.

(3) For any amounts reestablished under Section 1875, the date of the written notice of rescission provided under subdivision (c) of that section.

(4) For all other amounts, the date the assessment is final.

(c) The lien provided by this section shall not arise during any period that Section 362 of the United States Bankruptcy Code applies to the employing unit or other person against whom the lien would otherwise apply.

SEC. 3. Article 8 (commencing with Section 1870) is added to Chapter 7 of Part 1 of Division 1 of the Unemployment Insurance Code, to read:

Article 8. Offers in Compromise

1870. (a) When an employer or any individual assessed under Section 1735 owes delinquent contributions, withholdings, penalty, or interest to the department, the director may enter into an agreement to accept partial payment in satisfaction of the full liability under the following conditions when he or she believes that it will be in the best interest of the state.

(1) Offers in compromise shall be considered only for liabilities of inactive out-of-business accounts, and of individuals assessed under Section 1735 or partners only if the individual assessed or partner no longer has a controlling interest or association with the business that

incurred the liability to which the offer in compromise applies.

(2) The employer, individual assessed under Section 1735, or partner does not have access to current income sufficient to pay more than the accumulating interest and 6.7 percent of the liability on an annual basis.

(3) The employer, individual assessed under Section 1735, or partner does not have reasonable prospects of acquiring increased income or assets that would enable him or her to liquidate the liability in a reasonable period.

(4) The employer, individual assessed under Section 1735, or partner does not have assets, whether or not subjected to lien by the department, that if sold, would satisfy the liability.

(5) The amount offered in compromise is more than the department could reasonably expect to collect through involuntary means during the four-year period beginning on the date on which a compromise agreement is tendered by the employer, individual assessed under Section 1735, or partner.

(6) The compromise offer is submitted by the taxpayer in writing and is accompanied by cash, a cashier's check, or money order equal to the amount offered in compromise.

(7) Only nondisputed, final tax liabilities shall be considered for compromise.

(8) Liabilities that arose as a result of fraud or actions that resulted in a conviction for a violation of this code shall not be compromised.

(b) When in the director's judgment it serves the best interest of the state, the director may permit the agreed upon amount to be paid in installments under a payment agreement not to exceed five years in length.

(c) The employer or individual submitting an offer shall be notified in writing when an offer in compromise is accepted or rejected.

(1) Moneys paid to the department along with an offer shall not be applied against the liability by the department until the offer has been accepted or rejected.

(2) In the event an offer is rejected, the amount will either be applied to the liability or refunded, at the discretion of the employer or individual submitting the offer.

1871. No agreement negotiated by the director under Section 1870 that reduces any liability by ten thousand dollars ($10,000) or more shall be effective until it is reviewed and approved by the Unemployment Insurance Appeals Board. In reviewing any agreement, the Unemployment Insurance Appeals Board shall be restricted to determining, based on the case file submitted by the director, whether the director has exercised due diligence in determining whether the conditions set forth in subdivision (a) of Section 1870 have been satisfied.

1872. A determination by the director that it would not be in the best interest of the state to accept partial payment in satisfaction of a tax liability shall not be subject to administrative appeal or judicial

review.

1873. (a) Once the terms of the compromise agreement are fulfilled, including payment of the amount offered, the following shall occur:

(1) The liability shall be considered satisfied in full.

(2) All tax liens filed or recorded, or both, in accordance with Article 1 (commencing with Section 1701) shall be released.

(3) A statement shall be placed on file with the department containing the following information:

(A) The taxpayer's name and identification number.

(B) The year or years and quarter or quarters involved.

(C) The reason or reasons the liability was reduced by an offer in compromise.

(D) The total amount of unpaid tax, interest, additions to tax, and penalties at issue in the compromise.

(E) The terms of the offer in compromise.

(F) The total amount paid under the offer in compromise.

(b) All records of compromise required to be kept by the department may be reviewed as part of the annual single audit of the Employment Development Department.

(c) The department shall do all of the following:

(1) Notify the employer or individual submitting the offer in writing that the terms of the compromise agreement have been fulfilled, and that all liens filed or recorded, or both, in accordance with Article 1 (commencing with Section 1701) against the taxpayer's interests have been released.

(2) Furnish the employer or individual submitting the offer with a copy of the statement that is on file in accordance with paragraph (3) of subdivision (a).

(d) For a period of one year from the date that the statement is placed on file as required under paragraph (3) of subdivision (a), the statement shall be available for public inspection. However, no lists shall be distributed by the department in connection with these statements.

1874. In cases of joint and several liability, and where amounts are owed under Section 1735, an agreement under Section 1870 to accept partial payment in satisfaction of the liability of one or more debtors shall neither relieve any other debtors of the obligation to liquidate the entire balance of the debt remaining unpaid, nor grant to the debtor or debtors any right to appeal or seek judicial review of the director's determination.

1875. (a) If an offer under Section 1870 to accept partial payment in satisfaction of the liability has been accepted, and it is subsequently determined that any person willfully did any of the following, the acceptance shall be rescinded and all compromised liabilities shall be reestablished without regard to any statute of limitations that is applicable to this division:

(1) Concealed from any officer or employee of the state any property belonging to the estate of the employer or other person

liable with respect to the tax.

(2) Received, withheld, destroyed, mutilated, or falsified any book, document, or record.

(3) Made any false statement relating to the estate or financial conditions of the employer or other person liable in respect to the tax.

(4) Failed to pay any tax liability owed the department for any subsequent, active business in which the employer or individual who previously submitted the offer in compromise has a controlling interest or association.

(b) Upon any rescission pursuant to subdivision (a), the department, at its discretion, may file a Notice of State Tax Lien against the individuals or entity responsible for the previously compromised liability.

(c) For all rescissions under subdivision (a), the department shall notify the employer or individual who previously submitted the offer in compromise in writing of both of the following:

(1) The rescission of any offer and reasons therefor.

(2) The amount of reestablished liability that is due and payable.

CHAPTER 357

An act to amend Section 12020 of the Penal Code, relating to firearms.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 12020 of the Penal Code is amended to read:

12020. (a) Any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any fléchette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag, or who carries concealed upon his or her person any explosive substance, other than fixed ammunition or who carries concealed upon his or her person any dirk or dagger, is guilty of a felony, and upon conviction shall be

punishable by imprisonment in a county jail not exceeding one year or in the state prison. A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

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

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles by police departments, sheriffs' offices, marshals' offices, the California Highway Patrol, the Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by regular, salaried, full-time members of a police department, sheriff's office, marshal's office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(2) The manufacture, possession, transportation or sale of short-barreled shotguns or short-barreled rifles when authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition which is a curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess such items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition who obtains title to these items by bequest or intestate succession may retain title for not more than one year, but actual possession of these items at any time shall be punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year the person shall transfer title to the firearms or ammunition by sale, gift, or other disposition. Any person who violates this

paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within that year the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

(10) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are possessed or utilized during the course of a motion picture, television, or video production or entertainment event by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.

(11) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by persons who are in the business of selling instruments or devices listed in subdivision (a) solely to the entities referred in paragraphs (9) and (10) when engaging in transactions with those entities.

(12) The sale to, possession of, or purchase of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than short-barreled rifles and shotguns, when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(13) Weapons, devices, and ammunition, other than short-barreled rifles and short-barreled shotguns, that are sold by, manufactured by, exposed, or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (12) when engaging in transactions with those entities.

(14) The manufacture for, sale to, exposing or keeping for sale to,

importation of, or lending of wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(c) (1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire, or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if such firearm may be fired while mounted or enclosed in such case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being used as, an aid in walking, if such firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "fléchette dart" means a dart, capable of being fired from a firearm, which measures approximately one inch in length, with tail fins which take up five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, a "ballistic knife" means a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun.

(9) As used in this section, a "camouflaging firearm container" means a container which meets all of the following:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, a "zip gun" means any weapon or device which meets all of the following criteria:

(A) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(B) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(C) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued

pursuant thereto.

(D) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

(11) As used in this section, a "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(12) As used in this section, an "unconventional pistol" means a firearm that does not have a rifled bore and has a barrel or barrels of less than 18 inches in length or has an overall length of less than 26 inches.

(13) As used in this section, a "belt buckle knife" is a knife which is made an integral part of a belt buckle and consists of a blade with a length of at least 2½ inches.

(14) As used in this section, a "lipstick case knife" means a knife enclosed within and made an integral part of a lipstick case.

(15) As used in this section, a "cane sword" means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

(16) As used in this section, a "shobi-zue" means a staff, crutch, stick, rod, or pole concealing a knife or blade within it which may be exposed by a flip of the wrist or by a mechanical action.

(17) As used in this section, a "leaded cane" means a staff, crutch, stick, rod, pole, or similar device, unnaturally weighted with lead.

(18) As used in this section, an "air gauge knife" means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.

(19) As used in this section, a "writing pen knife" means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

(20) As used in this section, a "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(21) As used in this section, a "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.

(22) As used in this section, an "undetectable firearm" means any weapon which meets one of the following requirements:

(A) When, after removal of grips, stocks, and magazines, it is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar.

(B) When any major component of which, when subjected to inspection by the types of X-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(C) For purposes of this paragraph, the terms "firearm," "major component," and "Security Exemplar" have the same meanings as those terms are defined in Section 922 of Title 18 of the United States Code.

All firearm detection equipment newly installed in nonfederal public buildings in this state shall be of a type identified by either the United States Attorney General, the Secretary of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-art equipment capable of detecting an undetectable firearm, as defined, while distinguishing innocuous metal objects likely to be carried on one's person sufficient for reasonable passage of the public.

(23) As used in this section, a "multiburst trigger activator" means a device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device.

(24) As used in this section, a "dirk" or "dagger" means a knife or other instrument with or without a handguard that is primarily designed, constructed, or altered to be a stabbing instrument designed to inflict great bodily injury or death.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

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

CHAPTER 358

An act to amend Sections 20013.7 and 20013.75 of the Government Code, relating to public retirement systems.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 20013.7 of the Government Code is amended to read:

20013.7. (a) Effective January 1, 1985, there shall be an alternative level of benefits available to the following state miscellaneous members: (1) members who are excluded from the definition of state employee in subdivision (c) of Section 3513; (2) members employed by the executive branch of government who are not members of the civil services; and (3) members in state bargaining units for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this section. Effective September 1, 1986, this section shall apply to members employed by the state as provided for in Article VI of the Constitution. The board shall provide the affected members a one-month election period commencing on August 1, 1986. This section shall not apply to state miscellaneous members employed by the California State University or the University of California. This section shall not apply to any employee described by Section 20364 unless and until the employer, as defined in Section 20817, adopts a resolution approving that application.

(b) Effective September 1, 1986, there shall be an alternate level of benefits available to the following state industrial members: (1) members in state bargaining units for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this section; (2) members who are excluded from the definition of state employees in subdivision (c) of Section 3513; and (3) members employed by the executive branch of government who are not members of the civil service. The board shall provide the affected members a one-month election period commencing on August 1, 1986.

(c) Members eligible to participate in the alternative level of benefits, referred to in this part as the Second Tier, may make an irrevocable election during the period from November 1, 1988, through October 31, 1989, to: (1) become subject to the Second Tier benefits provided for in Section 21251.146 for all past state miscellaneous and state industrial service and all future state miscellaneous and state industrial service not excluded by this section; (2) become subject to the Second Tier benefits provided for

in Section 21251.147 for state miscellaneous and state industrial service not excluded by this section rendered on and after the effective date of the election to be subject to the Second Tier. Any election by a member to be subject to Section 21251.146 or Section 21251.147 shall also be signed by the spouse of the member and both signatures shall be notarized; (3) become subject to the First Tier retirement formula prescribed by Section 21251.13 for state miscellaneous and state industrial service rendered on or after the effective date of the election, provided that the member had previously elected coverage pursuant to Section 21251.146 or 21251.147 and makes the contributions specified in Section 20603; or (4) become subject to the First Tier retirement formula prescribed by Section 21251.13 for all past and future state miscellaneous and state industrial service, provided that the member had previously elected coverage pursuant to Section 21251.146 or 21251.147 and the member makes the contributions specified in Sections 20603 and 20813.5. The right of eligible members to elect coverage under the retirement formula of their choice shall apply solely during the above-prescribed one-year period, subject to conditions to be established and communicated by the board.

Thereafter, the board shall provide a 30-day period every five years for eligible members to make an irrevocable election to be subject to the Second Tier benefits provided for in Section 21251.146 or Section 21251.147. Eligible members who previously elected Section 21251.147 may make an irrevocable election to become subject to Section 21251.146 for all past state miscellaneous and state industrial service during this election period. The first election period shall be held five years from the ending date of the one year election period specified in this subdivision.

The effective date of any election filed with the board shall be the first of the month following the date the election is received in the system, provided the election meets the conditions set by the board. Any election filed with the board under this subdivision shall also be signed by the spouse of the member and both signatures shall be notarized.

(d) Persons who become state miscellaneous or state industrial members described in this section or who become such members under Article 3 (commencing with Section 20360) of Chapter 3 of this part on or after the Second Tier effective date applicable to the member, shall be subject to Section 21251.147 unless an election is filed with the board to be subject to Section 21251.13 and the member makes the contributions specified in Section 20603. The appointing authority shall provide the member with the election form and the member shall exercise the election within one year of becoming a member. The effective date of the election shall be the date on which the member became a state miscellaneous or state industrial member.

(e) A state miscellaneous or state industrial member who, on or after the effective date of an election to be subject to Section

21251.146 or Section 21251.147, ceases to be a member pursuant to Section 20390 or Section 20390.1 shall, upon again becoming a state miscellaneous or state industrial member, be subject to Section 21251.146 or Section 21251.147 in accordance with his or her previous irrevocable election. This subdivision does not apply to persons who return to membership as employees of the California State University.

Except as otherwise provided in this part, a state miscellaneous or state industrial member subject to Section 21251.146 or Section 21251.147 is subject to all other provisions applicable to state miscellaneous members except those provisions that provide for the payment of an annuity based on contributions. Notwithstanding any other provision of this part, member contributions are not required for any service credit that is subject to Section 21251.146.

(f) The board shall report to the Governor, the Legislature, and the Department of Personnel Administration on the savings that are the result of the implementation of the Second Tier retirement plan for state miscellaneous and state industrial members. The report shall first be submitted in April 1986, and annually in April of every year thereafter until April 1994.

SEC. 2. Section 20013.75 of the Government Code is amended to read:

20013.75. (a) It is the intent of the Legislature that the Department of Personnel Administration, in conjunction with the recognized state employee organizations, develop alternatives to the Second Tier retirement plan by June 30, 1992. The alternative plan may include enhanced benefits or provide benefits under a defined contribution program. However, the state employer's contribution to the alternative plan shall not be greater than the state's contribution rate to the current Second Tier. At the time that an alternative plan is agreed to and implemented, employees who were placed in the Second Tier shall be given an opportunity to elect coverage in the new alternative plan. In the event no alternative plan is implemented by June 30, 1992, employees shall remain in the Second Tier.

(b) Notwithstanding any other provision of this article, except as provided in subdivision (c), persons who first become state miscellaneous or state industrial members of the system on or after July 1, 1991, and who are either: (1) excluded from the definition of state employee in subdivision (c) of Section 3513; (2) employed by the executive branch of government who are not members of the civil services; or (3) included in the definition of state employee in subdivision (c) of Section 3513 shall become subject to Section 21251.146.

(c) Any person who was a member on or before June 30, 1991, eligible to elect membership on or before June 30, 1991, or who was employed in any position on or before June 30, 1991, that would lead to membership as a state member, as defined in Section 20013, and who thereafter enters employment subject to Section 21251.146 shall

be granted the rights provided in subdivision (d) of Section 20013.7, unless the person had earlier made an irrevocable election to be subject to Section 21251.146 or Section 21251.147. The one-year period in which to make the election provided in subdivision (d) of Section 20013.7 for any member who became a state member prior to January 1, 1994, shall commence with the mailing of a notice by the system to the member, of his or her election right. The effective date of the election shall be the date on which the member became a state miscellaneous or state industrial member. The member shall be obligated to make the contributions specified in Section 20603.

(d) This section shall not apply to state miscellaneous members employed by the California State University or employees described in Section 20364.

CHAPTER 359

An act to amend Sections 1694.1, 1694.2, 1694.6, and 1694.7 of the Civil Code, relating to contracts.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 1694.1 of the Civil Code is amended to read:

1694.1. (a) In addition to any other right to revoke an offer, the buyer has the right to cancel a dating service contract or offer, until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase those services.

(b) Cancellation occurs when the buyer gives written notice of cancellation by mail, telegram, or delivery to the seller at the address specified in the agreement or offer.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(d) Notice of cancellation given by the buyer need not take the particular form as provided in the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the dating service contract.

(e) All moneys paid pursuant to any contract for dating services shall be refunded within 10 days of receipt of the notice of cancellation.

(f) The buyer may notify the dating service of his or her intent to cancel the contract within the three-day period specified in this section and stop the processing of a credit card voucher or check by telephone notification to the dating service. However, this does not negate the obligation of the buyer to cancel the contract by mail, telegram, or delivery as required pursuant to this section.

SEC. 2. Section 1694.2 of the Civil Code is amended to read:

1694.2. (a) A dating service contract shall be in writing. A copy of the contract shall be provided to the buyer at the time he or she signs the contract.

(b) Every dating service contract shall contain on its face, and in close proximity to the space reserved for the signature of the buyer, a conspicuous statement in a size equal to at least 10-point boldface type, as follows:

"You, the buyer, may cancel this agreement, without any penalty or obligation, at any time prior to midnight of the original contract seller's third business day following the date of this contract, excluding Sundays and holidays. To cancel this agreement, mail or deliver a signed and dated notice, or send a telegram which states that you, the buyer, are canceling this agreement, or words of similar effect. This notice shall be sent to:

_____

(Name of the business that sold you the contract)

_____."

(Address of the business that sold you the contract)

(c) The dating service contract shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the name and address of the dating service operator to which the notice of cancellation is to be mailed; and the date the buyer signed the contract.

(d) No dating service contract shall require payments or financing by the buyer over a period in excess of two years from the date the contract is entered into, nor shall the term of any such contract be measured by the life of the buyer. However, the services to be rendered to the buyer under the contract may extend over a period beginning within six months and ending within three years of the date the contract is entered into.

(e) If a dating service contract is not in compliance with this chapter, the buyer may, at any time, cancel the contract.

SEC. 3. Section 1694.6 of the Civil Code is amended to read:

1694.6. (a) In addition to any other right to revoke an offer, the buyer has the right to cancel a weight loss contract or offer until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase those services.

(b) Cancellation occurs when the buyer gives written notice of cancellation by mail, telegram, or delivery to the seller at the address specified in the agreement or offer.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(d) Notice of cancellation given by the buyer need not take the particular form as provided in the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the weight loss contract.

(e) All moneys paid pursuant to any weight loss contract shall be

refunded within 10 days of receipt of the notice of cancellation.

(f) The buyer may notify the weight loss program of his or her intent to cancel the contract within the three-day period specified in this section and stop the processing of a credit card voucher or check by telephone notification to the weight loss program. However, this does not negate the obligation of the buyer to cancel the contract by mail, telegram, or delivery as required pursuant to this section.

SEC. 4. Section 1694.7 of the Civil Code is amended to read:

1694.7. (a) A weight loss contract shall be in writing. A copy of the contract shall be provided to the buyer at the time he or she signs the contract.

(b) Every weight loss contract shall contain on its face, and in close proximity to the space reserved for the signature of the buyer, a conspicuous statement in a size equal to at least 10-point boldface type, as follows:

"You, the buyer, may cancel this agreement, without any penalty or obligation, at any time prior to midnight of the original contract seller's third business day following the date of this contract, excluding Sundays and holidays. To cancel this agreement, mail or deliver a signed and dated notice, or send a telegram which states that you, the buyer, are canceling this agreement, or words of similar effect. This notice shall be sent to:

_____

(Name of the business that sold you the contract)

_____."

(Address of the business that sold you the contract)

(c) The weight loss contract shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the name and address of the weight loss program operator to which the notice of cancellation is to be mailed; and the date the buyer signed the contract.

(d) No weight loss contract shall require payments or financing by the buyer over a period in excess of two years from the date the contract is entered into, nor shall the term of any such contract be measured by the life of the buyer. The services to be rendered to the buyer under the contract shall not extend for more than three years after the date the contract is entered into.

(e) If a weight loss contract is not in compliance with this chapter, the buyer may, at any time, cancel the contract.

CHAPTER 360

An act to add Section 43601.5 to the Public Resources Code, relating to solid waste.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 43601.5 is added to the Public Resources Code, to read:

43601.5. (a) On or before March 1, 1994, the board shall review and revise regulations affecting solid waste landfill closure and postclosure financial assurances adopted in accordance with this article to make the regulations consistent with the requirements established pursuant to Subpart G (commencing with Section 258.1) of Part 258 of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations, as amended on October 9, 1991.

(b) In reviewing and revising regulations pursuant to subdivision (a), the board shall, consistent with this division, and with federal law and regulations, endeavor to minimize the costs of compliance with those regulations by the owners and operators of public solid waste landfills and to provide flexible mechanisms for those owners and operators to comply with closure and postclosure financial assurance requirements, in order to ensure that adequate funding will be available for programs and projects that are necessary to comply with the diversion requirements of Section 41780.

CHAPTER 361

An act to amend Section 2570 of the Business and Professions Code, relating to occupational therapy.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 2570 of the Business and Professions Code is amended to read:

2570. (a) Any person representing himself or herself as an occupational therapist shall meet all of the following requirements:

(1) Be a graduate of an occupational therapy curriculum that is accredited by the American Occupational Therapy Association, the World Federation of Occupational Therapy, or another nationally recognized accrediting agency.

(2) Meet either of the following requirements:

(A) Be certified, or eligible for certification, by the American Occupational Therapy Certification Board.

(B) Have at least two years of appropriate experience as an occupational therapist and have achieved a satisfactory grade on a proficiency examination approved by the Secretary of the United States Department of Health and Human Services.

(3) Meet the qualifications prescribed by regulations of the State Department of Health Services governing reimbursement of occupational therapy services under Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(b) Any person representing himself or herself as an occupational therapy assistant shall be a person who is certified, or eligible for certification, by the American Occupational Therapy Certification Board as a certified occupational therapy assistant, and shall meet the qualifications for occupational therapy assistants prescribed by regulations of the state department governing licensure of skilled nursing facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(c) It is unlawful and constitutes a misdemeanor for any person not meeting the criteria of subdivision (a) or (b) to use, in connection with his or her name or place of business, the words "occupational therapist," "occupational therapy assistant," "certified occupational therapist," "certified occupational therapy assistant," "occupational therapist registered," or the letters "OT," "OTA," "COT," "COTA," or "OTR," or any other words, letters, abbreviations, or insignia indicating or implying that he or she is an occupational therapist or to represent, in any way, orally, in writing, in print or by sign, directly or by implication, that he or she is an occupational therapist or occupational therapy assistant.

CHAPTER 362

An act to add Section 25503.28 to the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 25503.28 is added to the Business and Professions Code, to read:

25503.28. (a) Notwithstanding any other provision of this division, except as provided in Section 25503.20, the holder of no more than six on-sale licenses, or any officer, director, employee, or agent of that licensee, may own a corporate licensed beer manufacturer holding a license pursuant to paragraph (a) of

subdivision (1) of Section 23320, defined as a microbrewery, and may serve on the board of directors and as an officer or employee of that corporate licensed beer manufacturer.

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

(c) This section shall not be construed to conflict with or negate the provisions of Section 25503.20. This section shall have no application to a county of the first class.

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

CHAPTER 363

An act to amend Section 1126 of the Harbors and Navigation Code, relating to pilots.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 1126 of the Harbors and Navigation Code is amended to read:

1126. (a) Every person who is not the master or owner of the vessel or who does not hold a license as a pilot or as an inland pilot issued pursuant to this division, and who pilots any vessel into or out of any harbor or port of the Bays of San Francisco, San Pablo, and Suisun, or who acts as a pilot for ship movements or special operations upon the waters of those bays, is guilty of a misdemeanor. In addition to the fines or other penalties provided by law, the court may order that person to pay to the pilot entitled to pilot the vessel the amount of pilotage fees collected.

(b) Any person may also be enjoined from engaging in the pilotage prescribed by subdivision (a) by a court of competent jurisdiction.

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

(1) Persons piloting vessels pursuant to the valid regulatory authority of the Port of Sacramento and Stockton.

(2) Persons piloting vessels when a pilot is not available or is unable to reach the vessel.

(3) Persons piloting vessels sailing under an enrollment, as specified in Section 1127.

(4) Persons piloting vessels pursuant to Section 1179.

(5) Persons piloting vessels when a state licensed pilot is prevented from joining or refuses to join the vessel. However, a vessel may not hire a nonstate licensed pilot until both of the following occur:

(A) A representative of the vessel notifies the executive director of the board, or its designee, that this paragraph applies.

(B) The executive director immediately notifies the representative of the organization composed of state licensed pilots, or its designee, that the vessel will hire a nonstate licensed pilot unless a state licensed pilot offers to join the vessel immediately.

CHAPTER 364

An act to add Section 4621.5 to the Welfare and Institutions Code, relating to developmental disabilities.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 4621.5 is added to the Welfare and Institutions Code, to read:

4621.5. Notwithstanding subdivision (c) of Section 1 of Chapter 501 of the Statutes of 1971, the department shall, within the limitations of funds appropriated, contract with an appropriate private nonprofit corporation or corporations to operate regional centers as follows:

(a) One regional center to serve the Counties of Inyo, Kern, and Mono.

(b) One regional center to serve the Counties of Riverside and San Bernardino.

CHAPTER 365

An act to amend Section 12105 of the Business and Professions Code, relating to weights and measures.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 12105 of the Business and Professions Code is amended to read:

12105. The department shall, at a frequency determined by the director, inspect the work of the local sealers and may inspect the weights, measures, balances or any other weighing or measuring devices of any person.

CHAPTER 366

An act to amend Section 35810 of the Health and Safety Code, relating to housing.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 35810 of the Health and Safety Code is amended to read:

35810. (a) No financial institution shall discriminate in the availability of, or in the provision of, financial assistance for the purpose of purchasing, constructing, rehabilitating, improving, or refinancing housing accommodations due, in whole or in part, to the consideration of conditions, characteristics, or trends in the neighborhood or geographic area surrounding the housing accommodation, unless the financial institution can demonstrate that consideration of these conditions in the particular case is required to avoid an unsafe and unsound business practice.

(b) Nothing in this section shall be construed to prohibit any financial institution from establishing a special loan program designed to engender equality in housing in accordance with the federal Fair Housing Act (42 U.S.C. Secs. 3601 et seq.) or similar state and federal laws, so long as the program promotes housing opportunities in ethnic minority or low-income neighborhoods.

CHAPTER 367

An act to amend Section 69641 of, and to repeal Section 69645 of, the Government Code, relating to courts.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 69641 of the Government Code is amended to read:

69641. The board of supervisors of any county which has a population of not less than 4,000,000, as determined upon the basis of the last preceding census taken under the authority of the Congress or the Legislature, by ordinance may divide the county into not more than 12 superior court districts within which one or more sessions of the superior court shall be held.

SEC. 2. Section 69645 of the Government Code is repealed.

CHAPTER 368

An act to amend Section 45254 of the Education Code, relating to schools.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 45254 of the Education Code is amended to read:

45254. The budget for the first year of the personnel commission of the school district shall be determined by the personnel commission, in conjunction with the governing board of the school district. In the absence of an agreement between the personnel commission and the governing board, the commission shall forward its proposed budget to the county superintendent of schools, who shall determine the budget based upon the average of personnel commission budgets of the same type of school districts that have comparable enrollment within the county. In the absence of comparable school districts within the county, comparable statewide averages shall be used. The governing board shall provide funds to support the work of the personnel commission.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant

to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 369

An act to amend Section 245 of the Penal Code, relating to crimes.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 245 of the Penal Code is amended to read:

245. (a) (1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.

(2) Any person who commits an assault upon the person of another with a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars ($10,000) and imprisonment.

(3) Any person who commits an assault upon the person of another with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276, shall be punished by imprisonment in the state prison for 4, 8, or 12 years.

(b) Any person who commits an assault upon the person of another with a semiautomatic firearm shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.

(d) (1) Any person who commits an assault with a firearm upon the person of a peace officer or firefighter, and who knows or

reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) Any person who commits an assault upon the person of a peace officer or firefighter with a semiautomatic firearm and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(3) Any person who commits an assault with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276, upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for 6, 9, or 12 years.

(e) When a person is convicted of a violation of this section in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance, and it shall be confiscated and disposed of in the manner provided by Section 12028.

(f) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

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

CHAPTER 370

An act to add Section 16990.5 to the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 16990.5 is added to the Welfare and Institutions Code, to read:

16990.5. (a) The following definitions shall govern the construction of this section, unless the context requires otherwise:

(1) "Capital outlay" means net disproportionate share hospital revenues used for projects that involve the acquisition, construction, renovation, improvement, modernization, expansion, or replacement of a plant, building, or fixed or movable equipment, including debt service for facilities used in the provision of county health care services or mental health services.

(2) "County health care services" means those services described in subdivision (a) of Section 16801.

(3) "County financial maintenance of effort" means the level of financial support required of a county pursuant to Section 16990.

(4) "Net disproportionate share hospital revenues" means the amount determined by subtracting the total intergovernmental transfers made by a county pursuant to Sections 14163 and 14164 from the total amount of the payment adjustments paid to the county's hospital or hospitals pursuant to Section 14105.98.

(5) "Mental health services" means those programs transferred or otherwise financed pursuant to Chapters 89 and 91 of the Statutes of 1991.

(b) (1) Each county shall deposit all net disproportionate share hospital revenues into a fund or funds other than the county general fund, and shall retain those revenues until utilized for the purposes described in this section.

(2) All disproportionate share hospital revenues are intended to support health care services rendered by disproportionate share hospitals, including, but not limited to, health or mental health services and health or mental health capital outlays. Net disproportionate share hospital revenues shall not be used to supplant or offset county general funds or other funds that were expended or encumbered for those purposes prior to July 1, 1991.

(3) Net disproportionate share hospital revenues shall be included in computing county financial maintenance of effort only as set forth in subdivision (c).

(c) For the 1991–92 fiscal year, and for each fiscal year thereafter, for purposes of computing county financial maintenance of effort,

net disproportionate share hospital revenues deposited in accordance with subdivision (b) shall be treated as follows:

(1) Net disproportionate share hospital revenues utilized for a county for mental health services, or for capital outlay for health or mental health services, shall not be counted as revenue in the computation of county financial maintenance of effort.

(2) Net disproportionate share hospital revenues that are not utilized as described in paragraph (1) shall be counted as revenue in the computation of a county's financial maintenance of effort only to the extent that by not counting those revenues for a particular fiscal year, a county's net county costs for county health care services exceeds the amount of county funds required to satisfy the requirements of Section 16990 for the particular fiscal year.

(3) Net disproportionate share hospital revenues counted as revenue in the calculation of county financial maintenance of effort for a particular year pursuant to paragraph (2) shall not be counted as revenue in the calculation of county financial maintenance of effort relating to any subsequent fiscal year.

(d) Net disproportionate share hospital revenues may not be used for deposits required by Sections 17608.05 and 17608.10 or as county funds required by Section 16990.

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

In order to avoid the recoupment of Cigarette and Tobacco Products Surtax revenues intended for the provision of needed health and mental health services by local agencies in the 1992–93 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 371

An act to add Section 539 to the Penal Code, relating to community service.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 539 is added to the Penal Code, to read:

539. Every person who, with the intent to defraud, certifies that a person ordered by the court to participate in community service as a condition of probation has completed the number of hours of community service prescribed in the court order and the participant has not completed the prescribed number of hours, is guilty of a misdemeanor.

SEC. 2. No reimbursement is required by this act pursuant to

Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 372

An act to amend Section 2590 of the Business and Professions Code, relating to perfusionists, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 2590 of the Business and Professions Code is amended to read:

2590. (a) For purposes of this section, "perfusion" means those functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular system, circulatory system with or without the oxygenation circuit, or any combination of those activities, and to ensure the safe management of physiologic functions by monitoring the necessary parameters of those systems pursuant to an order and under the supervision of a licensed physician and surgeon.

(b) Perfusion services include, but are not limited to, all of the following:

(1) The use of extracorporeal circulation, cardiopulmonary support techniques, and other ancillary therapeutic and diagnostic technologies. "Extracorporeal circulation," as used in this section, means the diversion of a patient's blood through a heart-lung machine or a similar device which assumes the functions of the patient's heart, lungs, or both.

(2) Counterpulsation, ventricular assistance, autotransfusion, including blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and isolated limb perfusion.

(3) The use of techniques involving blood management, advanced life support, and other related functions.

(c) Perfusion services also include, but only during the performance of functions described in subdivision (b), the following:

(1) The administration of pharmacological and therapeutic

agents, blood products, or anesthetic agents through the extracorporeal circuit or through an intravenous line as ordered by a physician and surgeon.

(2) The performance and use of anticoagulation analysis, physiologic monitoring, blood gas and chemistry analysis, hematocrit analysis, hypothermia, hyperthermia, hemoconcentration, and hemodilution. Nothing in this paragraph shall exempt perfusionists from the requirements of the Clinical Laboratory Improvement Amendments of 1988 (P.L. 100-578) or from the nonpersonnel related requirements of Chapter 3 (commencing with Section 1200), including, but not limited to, quality assurance and equipment maintenance requirements.

(3) The observation of signs and symptoms related to perfusion services.

(4) Making a determination whether the signs and symptoms related to perfusion services exhibit abnormal characteristics.

(5) Implementation, based on observed abnormalities, of appropriate reporting, or perfusion protocols, or changes in treatment regimen, pursuant to an order by a physician and surgeon, or the initiation of emergency procedures. "Perfusion protocols" as used in this section means perfusion-related policies and protocols developed or approved by a licensed health facility or a physician and surgeon through collaboration with administrators and health professionals, including perfusionists.

(d) Commencing January 1, 1993, no person shall hold himself or herself out as a perfusionist, unless at the time of doing so the person meets the educational and examination requirements specified in subdivisions (e) and (f).

(e) Except as provided in subdivision (f), persons holding themselves out as perfusionists shall be graduates of a training program described in Section 2592 and produce satisfactory evidence of successful completion of the entire examination of the American Board of Cardiovascular Perfusion or the equivalent thereof if an equivalent is determined to be necessary by the Division of Allied Health Professions of the Medical Board of California.

(f) Any person may be deemed to have completed the equivalent of the examination and education requirements if that person is currently certified by the American Board of Cardiovascular Perfusion, or if, as of January 1, 1993, the person has practiced as a perfusionist and has annually performed a minimum of 40 cases of cardiopulmonary bypass during cardiopulmonary surgery in a licensed health facility and has done so for at least five years since January 1, 1987. For the purposes of this subdivision, "licensed health facility" means a health facility licensed in any jurisdiction within the United States.

(g) In order to continue to use the title of "perfusionist," the person shall complete the continuing education requirements of, or maintain active certification by, the American Board of Cardiovascular Perfusion, or the equivalent if an equivalent is

determined to be necessary by the Division of Allied Health Professions of the Medical Board of California.

(h) Any person who violates this section is guilty of a misdemeanor.

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

In order to prevent, at the earliest possible time, any unnecessary disruptions in the operation of heart-lung machines during cardiac surgery, which disruptions would endanger the life and safety of patients undergoing cardiac surgery, it is necessary that this act take effect immediately.

CHAPTER 373

An act to add Section 10133.5 to the Business and Professions Code, relating to real estate.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 10133.5 is added to the Business and Professions Code, to read:

10133.5. The provisions of Articles 5 (commencing with Section 10230) and 6 (commencing with Section 10237) of this chapter do not apply to any person who is an approved lender, mortgagee, seller, or servicer for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, when making loans to be sold to, or when servicing loans on behalf of and subject to audit by, any of the foregoing with respect to those loans.

CHAPTER 374

An act to add Section 1793.025 to the Civil Code, relating to consumer warranties.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 1793.025 is added to the Civil Code, to read:

1793.025. (a) All new motorized wheelchairs sold at retail or leased in this state and paid for in whole or in part pursuant to the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) shall be accompanied by the manufacturer's or lessor's written express warranty that the wheelchair is free of defects. The duration of the warranty shall be for a period of at least one year from the date of the first delivery of the wheelchair to the consumer. If the written express warranty is not furnished to the consumer, the motorized wheelchair nonetheless shall be deemed to be covered by the express warranty.

(b) The provisions of this chapter for express warranties govern the express warranty described in subdivision (a), whether or not those provisions only apply to the sale, and not the lease, of goods.

(c) A reasonable number of attempts have been made to conform a motorized wheelchair to the express warranty if, within the warranty period or within one year of inception of the warranty, whichever occurs first, (1) the same nonconformity has been subject to repair four or more times by the manufacturer, lessor, or an agent thereof, and continues to exist, or (2) the motorized wheelchair is out of service by reason of repair of nonconformities by the manufacturer, lessor, or an agent thereof, for a cumulative total of more than 30 calendar days since inception of the warranty.

(d) No motorized wheelchair that has been returned to the manufacturer, lessor, or an agent thereof, by the consumer for failure to repair a nonconformity after a reasonable number of attempts, either in this state or in another state pursuant to a similar statute of that state, may be sold or leased again in this state unless the reasons for the return are fully disclosed to the prospective buyer or lessee.

CHAPTER 375

An act to amend Section 21083.2 of the Public Resources Code, relating to environmental quality.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 21083.2 of the Public Resources Code is amended to read:

21083.2. (a) As part of the determination made pursuant to Section 21080.1, the lead agency shall determine whether the project may have a significant effect on archaeological resources. If the lead agency determines that the project may have a significant effect on unique archaeological resources, the environmental impact report shall address the issue of those resources. An environmental impact report, if otherwise necessary, shall not address the issue of nonunique archaeological resources. A negative declaration shall be issued with respect to a project if, but for the issue of nonunique archaeological resources, the negative declaration would be otherwise issued.

(b) If it can be demonstrated that a project will cause damage to a unique archaeological resource, the lead agency may require reasonable efforts to be made to permit any or all of these resources to be preserved in place or left in an undisturbed state. Examples of that treatment, in no order of preference, may include, but are not limited to, any of the following:

(1) Planning construction to avoid archaeological sites.

(2) Deeding archaeological sites into permanent conservation easements.

(3) Capping or covering archaeological sites with a layer of soil before building on the sites.

(4) Planning parks, greenspace, or other open space to incorporate archaeological sites.

(c) To the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, mitigation measures shall be required as provided in this subdivision. The project applicant shall provide a guarantee to the lead agency to pay one-half the estimated cost of mitigating the significant effects of the project on unique archaeological resources. In determining payment, the lead agency shall give due consideration to the in-kind value of project design or expenditures that are intended to permit any or all archaeological resources or California Native American culturally significant sites to be preserved in place or left in an undisturbed state. When a final decision is made to carry out or approve the project, the lead agency shall, if necessary, reduce the specified mitigation measures to those which can be funded with the

money guaranteed by the project applicant plus the money voluntarily guaranteed by any other person or persons for those mitigation purposes. In order to allow time for interested persons to provide the funding guarantee referred to in this subdivision, a final decision to carry out or approve a project shall not occur sooner than 60 days after completion of the recommended special environmental impact report required by this section.

(d) Excavation as mitigation shall be restricted to those parts of the unique archaeological resource that would be damaged or destroyed by the project. Excavation as mitigation shall not be required for a unique archaeological resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the resource, if this determination is documented in the environmental impact report.

(e) In no event shall the amount paid by a project applicant for mitigation measures required pursuant to subdivision (c) exceed the following amounts:

(1) An amount equal to one-half of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a commercial or industrial project.

(2) An amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a housing project consisting of a single unit.

(3) If a housing project consists of more than a single unit, an amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of the project for the first unit plus the sum of the following:

(A) Two hundred dollars ($200) per unit for any of the next 99 units.

(B) One hundred fifty dollars ($150) per unit for any of the next 400 units.

(C) One hundred dollars ($100) per unit in excess of 500 units.

(f) Unless special or unusual circumstances warrant an exception, the field excavation phase of an approved mitigation plan shall be completed within 90 days after final approval necessary to implement the physical development of the project or, if a phased project, in connection with the phased portion to which the specific mitigation measures are applicable. However, the project applicant may extend that period if he or she so elects. Nothing in this section shall nullify protections for Indian cemeteries under any other provision of law.

(g) As used in this section, "unique archaeological resource" means an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

(1) Contains information needed to answer important scientific

research questions and that there is a demonstrable public interest in that information.

(2) Has a special and particular quality such as being the oldest of its type or the best available example of its type.

(3) Is directly associated with a scientifically recognized important prehistoric or historic event or person.

(h) As used in this section, "nonunique archaeological resource" means an archaeological artifact, object, or site which does not meet the criteria in subdivision (g). A nonunique archaeological resource need be given no further consideration, other than the simple recording of its existence by the lead agency if it so elects.

(i) As part of the objectives, criteria, and procedures required by Section 21082 or as part of conditions imposed for mitigation, a lead agency may make provisions for archaeological sites accidentally discovered during construction. These provisions may include an immediate evaluation of the find. If the find is determined to be a unique archaeological resource, contingency funding and a time allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures may be required under the provisions set forth in this section. Construction work may continue on other parts of the building site while archaeological mitigation takes place.

(j) This section does not apply to any project described in subdivision (a) or (b) of Section 21065 if the lead agency elects to comply with all other applicable provisions of this division. This section does not apply to any project described in subdivision (c) of Section 21065 if the applicant and the lead agency jointly elect to comply with all other applicable provisions of this division.

(k) Any additional costs to any local agency as a result of complying with this section with respect to a project of other than a public agency shall be borne by the project applicant.

(*l*) Nothing in this section is intended to affect or modify the requirements of Section 21084 or 21084.1.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 376

An act to amend Sections 182.5, 182.9, 188, 188.8, and 2413 of the Streets and Highways Code, relating to transportation.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 182.5 of the Streets and Highways Code is amended to read:

182.5. (a) It is the intent of the Legislature that the commission program and allocate funds in compliance with the requirements of Sections 188 and 188.8. To the extent that county minimums for any four-year period have not been adhered to in the state transportation improvement program adopted by the commission because of subsequent changes in project alternatives or costs, changes in overall funding availability, or program amendments, or for any other unforeseen reason, any individual county shortfall for that period shall be carried forward and be added to the following four-year period.

(b) The commission shall not allocate funds for any project unless the commission has programmed the state transportation improvement program in a manner that complies with the requirements of Sections 188 and 188.8.

(c) It is the intent of the Legislature that the funding plan in Section 164 be the overall state goal. The amount in each subprogram element may vary in each county.

SEC. 1.5. Section 182.9 of the Streets and Highways Code is amended to read:

182.9. There shall be appropriated from nonfederal funds in the State Highway Account, and the commission shall allocate to each county, an amount, not to exceed one hundred thousand dollars ($100,000) each fiscal year, equal to 50 percent of the amount allocated to the county pursuant to paragraph (2) of subdivision (d) of Section 182.6. The amount shall not be reduced by any exchange of funds made pursuant to subdivision (g) of Section 182. Funds allocated pursuant to this section shall be used to match the federal funds allocated pursuant to paragraph (2) of subdivision (d) of Section 182.6 or, if excess, may be used for any transportation purpose.

SEC. 2. Section 188 of the Streets and Highways Code is amended to read:

188. (a) All federal and state funds to be allocated by the commission for flexible congestion relief, urban and commuter rail, interregional roads, and noise attenuation barriers, which are to be expended for construction, including the acquisition of rights-of-way, reconstruction, and construction engineering, shall be programmed

during the period commencing on July 1, 1989, and ending on June 30, 1993, and for each four-year period thereafter, 40 percent in County Group No. 1 and 60 percent in County Group No. 2.

(b) Notwithstanding subdivision (a) and Section 14526.5 of the Government Code, all federal and state funds for rehabilitation, safety, and maintenance that were programmed or projected to be programmed by the commission prior to July 1, 1992, for construction prior to July 1, 1997, shall be treated as flexible congestion relief.

(c) This section shall be known and may be cited as the Barnes-Mills-Walsh formula.

SEC. 3. Section 188.8 of the Streets and Highways Code is amended to read:

188.8. From the funds programmed pursuant to Section 188, the commission shall approve programs, program amendments, and fund reservations so that funding is distributed to each county of County Group No. 1 and in each county of County Group No. 2 during the period commencing July 1, 1983, and ending June 30, 1988, and for the period commencing July 1, 1988, and ending June 30, 1993, each period of four years thereafter, not less than an amount computed as follows:

(a) The commission shall compute, for the five-year period and for each of the four-year periods, an amount equal to 70 percent of the funds for County Groups Nos. 1 and 2, respectively, as provided in Section 188.

(b) From the amount computed for County Group No. 1 in subdivision (a) for the five-year period and each four-year period, the commission shall determine the minimum amount of programming for each county in the group based on a formula which is based 75 percent on the population of the county to the total population of County Group No. 1 and 25 percent on state highway miles in the county to the total state highway miles in County Group No. 1.

(c) From the amount computed for County Group No. 2 in subdivision (a) for the five-year period and each four-year period, the commission shall determine the minimum amount of programming for each county in the group based on a formula which is based 75 percent on the population of the county to the total population of County Group No. 2 and 25 percent on state highway miles in the county to the total state highway miles in County Group No. 2.

(d) A county board of supervisors may adopt a resolution to pool its county minimum programming with adjacent counties adopting similar resolutions. The resolution shall provide for pooling the county minimum programming in any of the pooling counties for a four-year period and shall be submitted to the commission not later than May 1 immediately preceding the commencement of the four-year period.

(e) For the purposes of this section, "project costs" consist of any of the following:

(1) The amount programmed for right-of-way, adjusted for final estimates in the department's annual right-of-way plans, including early hardship and protection acquisitions from 1982 or later against the first year in which right-of-way funding is programmed.

(2) The engineer's final estimate of project costs presented to the commission for approval pursuant to Section 14533 of the Government Code.

(3) Project costs shown in the program, as amended where project allocations have not yet been approved by the commission, escalated to the date of scheduled project delivery.

(4) Any preliminary, environmental, design, or construction engineering costs programmed and allocated by the commission to local agencies.

(f) Project costs shall not be changed to reflect actual right-of-way purchase costs or construction contract award amounts, or for changes in construction expenditures.

(g) For funding programmed prior to the 1990 State Transportation Improvement Program, all project costs count in the fiscal year from which the commission allocates funding; for funding programmed by the commission in the 1990 State Transportation Improvement Program and subsequently, all project costs count at the original year of commission programming, regardless of subsequent changes in schedule of project delivery. The commission may designate in a program the split funding of projects, with specified amounts or percentages of the project's cost to be assigned to separate years or four-year periods. Nevertheless, additional funding programmed by the commission to cover a cost increase greater than 120 percent of a project's base cost pursuant to paragraph (1) of subdivision (f) of Section 14529 of the Government Code shall be counted in the fiscal year from which the commission programs the additional funding, and any supplemental allocation of funds by commission vote shall be counted in the year that vote occurs.

(h) For the purpose of this section, the population in each county is that determined by the last preceding federal census, or a subsequent census validated by the Population Research Unit of the Department of Finance, at the beginning of each four-year period.

(i) For the purpose of this section, "state highway miles," means the miles of state highways open to vehicular traffic at the beginning of each four-year period.

(j) It is the intent of the Legislature that there is to be flexibility in programming under this section and Section 188 so that, while ensuring that each county will receive an equitable share of state dollars, the types of projects selected and the programs from which they are funded may vary from county to county.

SEC. 4. Section 2413 of the Streets and Highways Code is amended to read:

2413. (a) The department may allocate to the counties and the cities federal funds received for approved bridge reconstruction or

replacement projects on county roads or city streets in accordance with procedures promulgated by the director in cooperation with the counties and the cities and approved by the commission.

(b) The cities and the counties may use any funds available to them to match funds made available to them under this chapter, if the use of funds for such matching purposes is not prohibited by federal law. "Match," as used in this chapter, means to provide for the payment of the cost of any project to the extent that such cost is not to be reimbursed from federal funds.

CHAPTER 377

An act to amend Section 273 of the Penal Code, relating to adoption.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 273 of the Penal Code is amended to read:

273. (a) It is a misdemeanor for any person or agency to pay, or offer to pay, money or anything of value to a parent for the placement for adoption, for the consent to an adoption, or for cooperation in the completion of an adoption of his or her child.

(b) This section shall not make it unlawful to pay the maternity-connected medical or hospital and necessary living expenses of the mother preceding and during confinement as an act of charity, as long as the payment is not contingent upon placement of the child for adoption, consent to the adoption, or cooperation in the completion of the adoption.

(c) It is a misdemeanor punishable by imprisonment in a county jail not exceeding one year or by a fine not exceeding two thousand five hundred dollars ($2,500) for any parent to obtain the financial benefits set forth in subdivision (b) with the intent to receive those financial benefits where there is an intent to do either of the following:

(1) Not complete the adoption.

(2) Not consent to the adoption.

(d) It is a misdemeanor punishable by imprisonment in a county jail not exceeding one year or by a fine not exceeding two thousand five hundred dollars ($2,500) for any parent to obtain the financial benefits set forth in subdivision (b) from two or more prospective adopting families or persons, if either parent does both of the following:

(1) Knowingly fails to disclose to those families or persons that there are other prospective adopting families or persons interested in adopting the child, with knowledge that there is an obligation to

disclose that information.

(2) Knowingly accepts the financial benefits set forth in subdivision (b) if the aggregate amount exceeds the reasonable maternity-connected medical or hospital and necessary living expenses of the mother preceding and during the pregnancy.

(e) Any person who has been convicted previously of an offense described in subdivision (c) or (d), who is separately tried and convicted of a subsequent violation of subdivision (c) or (d), is guilty of a public offense punishable by imprisonment in a county jail or in the state prison.

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

CHAPTER 378

An act to amend Sections 44225, 44270, 44270.1, 44270.2, and 44300 of the Education Code, relating to teacher credentialing.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 44225 of the Education Code is amended to read:

44225. The commission shall do all of the following:

(a) Establish professional standards, assessments, and examinations for entry and advancement in the education profession. While the Legislature recognizes that the commission will exercise its prerogative to determine those requirements, it is the intent of the Legislature that standards, assessments, and examinations be developed and implemented for the following:

(1) The preliminary teaching credential, to be granted upon possession of a baccalaureate degree from a regionally accredited institution in a subject other than professional education, completion of an accredited program of professional preparation, and either successful passage of an examination or assessment that has been adopted or approved by the commission in the subject or subjects appropriate to the grade level to be taught, to include college level reading, writing, and mathematics skills, or completion of an

accredited program of subject matter preparation and successful passage of the basic skills proficiency test as provided for in Article 4 (commencing with Section 44250). The commission shall uniformly consider the results of the basic skills proficiency test in conjunction with other pertinent information about the qualifications of each candidate for a preliminary credential, and may award the credential on the basis of the overall performance of a candidate as measured by several criteria of professional competence, provided that each candidate meets minimum standards set by the commission on each criterion. Upon application by a regionally accredited institution of higher education, the commission may categorically grant credit to coursework completed in an accredited program of professional preparation, as specified by this paragraph, by undergraduates of that institution, where the commission finds there are adequate assurances of the quality of necessary undergraduate instruction in the liberal arts and in the subject area or areas to be taught.

(2) The professional teaching credential, to be granted upon successful passage of a state examination or assessment in the subject or subjects appropriate to the grade level to be taught, to include college level basic reading, writing, and mathematics skills, and completion of a period of beginning teacher support that includes assessments of ability to teach subject matter to pupils, ability to work well with pupils, classroom management, and instructional skills. A candidate who successfully passes the examination or assessment pursuant to paragraph (1) shall be deemed to have passed the state examination or assessment in the subject or subjects to be taught pursuant to this paragraph.

(b) Reduce and streamline the credential system to ensure teacher competence in the subject field or fields, while allowing greater flexibility in staffing local schools. The commission shall award the following types of credentials to applicants whose preparation and competence satisfy its standards:

(1) Basic teaching credentials for teaching in kindergarten, or any of the grades 1 to 12, inclusive, in public schools in this state.

(2) Credentials for teaching adult education classes and vocational education classes.

(3) Credentials for teaching specialties, including, but not necessarily limited to, bilingual education, early childhood education, and special education. The commission may grant credentials to any candidate who concurrently meets the commission's standards of preparation and competence for the preliminary basic teaching credential and the preliminary specialty credential.

(4) Credentials for school services, for positions including, but not limited to, administrators, school counselors, speech-language therapists, audiologists, school psychologists, library media teachers, supervisors of attendance, and school nurses.

The commission may establish standards and requirements for preliminary and professional credentials of each type.

(c) Review and, if necessary, revise the code of ethics for the teaching profession.

(d) Establish standards for the issuance and renewal of credentials, certificates, and permits. In setting standards, the commission shall seek to ensure, through its credentialing of teachers, that public school teachers satisfy all of the following criteria:

(1) Are academically talented.

(2) Are knowledgeable of the subjects to be taught in the classroom.

(3) Are creative and energetic.

(4) Have the human skills to motivate and inspire pupils to achieve their goals.

(5) Have the sensitivity to foster self-esteem in pupils through recognition that each pupil has his or her own goals, talents, and levels of development.

(6) Be willing to relate the educational process and their instructional strategies to meet pupils' needs.

(7) Are able to work effectively with and motivate pupils from a variety of ethnic, socioeconomic, cultural, academic, and linguistic backgrounds.

(8) Have an understanding of principles and laws related to educational equity, and the equitable practice of the profession of education among all pupils regardless of their ethnicity, race, gender, age, religious background, primary language, or handicapping condition.

(e) Determine the scope and authorization of credentials, to ensure competence in teaching and other educational services, and establish sanctions for the misuse of credentials and the misassignment of credential holders. The commission may grant an added or supplementary authorization to a credential holder who has met the requirements and standards of the commission for the added or supplementary authorization. The commission shall exempt the holder of a teaching credential obtained prior to January 1, 1974, who adds an authorization by successfully completing a commission approved subject matter examination, from the requirements of subdivision (e) of Section 44259 and Sections 44261, 44261.5, and 44261.7.

(f) Collect, compile, and disseminate information regarding exemplary practices in supporting and assessing beginning teachers.

(g) Establish alternative methods for entry into the teaching profession, and into other certificated roles in the schools, by persons in varying circumstances, including persons who have been educated outside of California, provided that each applicant satisfies all of the requirements established by the commission. One alternative method shall be the successful completion of at least two years of classroom instruction under a district intern certificate, pursuant to Article 7.5 (commencing with Section 44325). In establishing alternative methods for entry into the teaching

profession, the commission shall develop strategies to encourage classroom aides to become credentialed teachers.

(h) Adopt a framework and general standards for the accreditation of preparation programs for teachers and other certificated educators pursuant to Article 7 (commencing with Section 44320).

(i) Appoint classroom teachers, school administrators, other school services personnel, representatives of the public, and public or private higher education representatives to one or more standing committees, which shall be given authority to recommend to the commission standards relating to examinations, performance assessments, program accreditation, and licensing. The commission shall establish criteria for membership on those committees, and shall determine the terms of committee members. Appointments to standing committees by the commission shall reflect, to the extent feasible, the ethnic and cultural diversity of the California public schools.

(j) Consult with classroom teachers, faculty members from institutions of higher education that maintain accredited programs of professional preparation for teachers, administrators or other school services personnel, and other experts to aid in the development of examinations and assessments, and to study the impact of examinations and assessments on the teaching profession. To increase the fairness of its certification decisions, the commission may uniformly consider the results of tests, subtests, and assessments in conjunction with each other, and in conjunction with other pertinent information about the qualifications of each candidate. The commission may award credentials on the basis of average overall performances by candidates on several criteria of professional competence, provided that each candidate meets minimum standards set by the commission on each criterion.

(k) Adopt standards for all examinations and assessments which shall ensure that all prospective teachers demonstrate an understanding of the history and cultures of the major ethnic populations of this state and of teaching strategies for the acquisition of English language skills by non-English-speaking pupils.

(*l*) Determine the terms of credentials, certificates, and permits, except that no credential, certificate, or permit shall be valid for more than five years from the date of issuance. This article shall govern the issuance of any credential, certificate, or permit, except as follows:

(1) A credential, certificate, or permit shall remain in force as long as it is valid and continues to be valid under the laws and regulations that were in effect when it was issued.

(2) The commission shall grant teaching credentials pursuant to statutes that were in effect on December 31, 1988, to candidates who, prior to the effective date of regulations to implement subdivision (a), are in the process of meeting the requirements for teaching credentials that were in effect on December 31, 1988, except that

neither enrollment as an undergraduate student nor receipt of a baccalaureate degree from a regionally accredited institution prior to the effective date of the regulations shall, by themselves, exempt a candidate from the requirements of subdivision (a). Enrollment in a preparation program for teachers prior to the effective date of the regulations shall not exempt a candidate from the requirements of paragraph (2) of subdivision (a), if the candidate's preliminary credential was granted after the effective date of the regulations.

(m) Review requests from school districts, county offices of education, private schools, postsecondary institutions, and individual applicants for the waiver of one or more of the provisions of this chapter or other provisions governing the preparation or licensing of educators. The commission may grant a waiver upon its finding that professional preparation equivalent to that prescribed under the provision or provisions to be waived will be, or has been, completed by the credential candidate or candidates affected or that a waiver is necessary to accomplish any of the following:

(1) Give a local education agency one semester or less to address unanticipated, immediate, short-term shortages of fully qualified educators by assigning a teacher who holds a basic teaching credential to teach outside of his or her credential authorization, with the teacher's consent.

(2) Provide credential candidates additional time to complete a credential requirement.

(3) Allow local school districts or schools to implement an education reform or restructuring plan.

(4) Temporarily exempt from a specified credential requirement small, geographically isolated regions with severely limited ability to develop personnel.

(5) Provide other temporary exemptions when deemed appropriate by the commission.

No provision in this chapter may be waived under Section 33050 and 33051, after June 30, 1994, by the State Board of Education.

(n) It is the intent of the Legislature that the commission develop models for voluntary use by California colleges and universities which do not have these models in place, to assist in the screening of applications for admission to teacher education programs. The models shall give emphasis to the following qualifications of the applicants: academic talent, knowledge of subjects to be taught, basic academic skills, creativity, experience in working with children and adolescents, ability to motivate and inspire pupils, and willingness to relate education to pupils with a wide variety of cultural, ethnic, and academic backgrounds. The commission may continue to administer the state basic skills proficiency test, in order (1) to utilize the results of this test in awarding preliminary teaching credentials and emergency permits, and (2) to enable colleges and universities to utilize this test in conjunction with other appropriate sources of information in teacher preparation admission decisions. However, it is the intent of the Legislature that applicants for admission to

teacher preparation programs may not be denied admission solely on the basis of state basic skills proficiency test results. The commission may recover the costs of administering and developing the test by charging examinees a fee for taking the test.

(o) It is the intent of the Legislature that the commission encourage colleges and universities to design and implement, by August 1, 1990, concentrated internship programs for persons who have attained a bachelor's degree in the field in which they intend to teach. Those programs would be targeted at subject area shortages, would substitute for conventional training programs, and would include a full summer session of college level coursework, a one-year internship, or the equivalent, a seminar throughout the internship, and a summer session following the internship. Educator preparation through internship programs shall be subject to Article 10 (commencing with Section 44370).

(p) Grant a field placement certificate to any candidate who has been admitted to an accredited program of professional preparation, and who must complete a supervised practicum in public elementary or secondary schools as a condition for completion of the program. The commission shall establish standards for the issuance of field placement certificates.

(q) Propose appropriate rules and regulations to implement the act which enacts this section.

(r) Adopt subject matter assessments for teaching credentials after developing those assessments jointly with the Superintendent of Public Instruction.

SEC. 2. Section 44270 of the Education Code is amended to read:

44270. (a) The minimum requirements for the preliminary services credential with a specialization in administrative services are all of the following:

(1) Possession of one of the following:

(A) A valid teaching credential requiring the possession of a baccalaureate degree and a professional preparation program including student teaching.

(B) A valid designated subjects vocational education, adult, or special subjects teaching credential, as specified in Section 44260, 44260.1, 44260.2, 44260.3, or 44260.4, provided the candidate also possesses a baccalaureate degree.

(C) A valid services credential with a specialization in pupil personnel, health, or clinical or rehabilitative services, as specified in Section 44266, 44267, 44267.5, or 44268, or a valid services credential authorizing service as a library media teacher, as specified in Section 44269.

(D) A valid credential issued under the laws, rules, and regulations in effect on or before December 31, 1971, which authorizes the same areas as in subparagraphs (B) and (C).

(2) Completion of a minimum of three years of successful, full-time classroom teaching experience in the public schools, including, but not limited to, service in state- or county-operated

schools, or in private schools of equivalent status or three years of experience in the fields of pupil personnel, health, clinical or rehabilitative, or librarian services.

(3) Completion of an entry level program of specialized and professional preparation in administrative services approved by the commission or a one-year internship in a program of supervised training in administrative services, approved by the commission as satisfying the requirements for the preliminary services credential with a specialization in administrative services.

(4) Current employment in an administrative position after completion of professional preparation as defined in paragraph (3), whether full or part time, in a public school or private school of equivalent status. The commission shall encourage school districts to consider the recency of preparation or professional growth in school administration as one of the criteria for employment.

(b) The preliminary administrative services credential shall be valid for a period of five years from the date of initial employment in an administrative position, whether full or part time, and shall not be renewable.

(c) A candidate who completed, by September 30, 1984, the requirements for the administrative services credential in effect on June 30, 1982, is eligible for the credential authorized under those requirements. All other candidates shall satisfy the requirements set forth in this section.

SEC. 3. Section 44270.1 of the Education Code is amended to read:

44270.1. (a) The minimum requirements for the professional services credential with a specialization in administrative services are all of the following:

(1) Possession of a valid preliminary administrative services credential, as specified in Section 44270.

(2) A minimum of two years of successful experience in a full-time administrative position in a public school or private school of equivalent status, while holding the preliminary administrative services credential, as attested by the employing school district or agency, including, but not limited to, the State Department of Education, in the case of state school administrators, and county offices of education, in the case of county school administrators.

(3) Completion of a commission-approved program of advanced preparation. Each candidate, in consultation with employing school district personnel and university personnel, shall develop an individualized program of professional development activities for this advanced preparation program based upon individual needs. Each individualized program will include university coursework and may include nonuniversity activities or advanced administrative field experiences. The commission shall adopt standards and criteria for the university programs of advanced preparation and nonuniversity activities.

(b) The professional administrative services credential shall be

valid for a period of five years from date of issuance and may be renewed upon completion of professional renewal requirements specified by the commission.

SEC. 4. Section 44270.2 of the Education Code is amended to read:

44270.2. The services credential with a specialization in administrative services shall authorize the holder to perform administrative services at all grade levels.

Any person who administers a pupil personnel program shall hold a services credential with a pupil personnel or administrative specialization.

SEC. 5. Section 44300 of the Education Code is amended to read:

44300. (a) Commencing January 1, 1990, the commission may issue or renew emergency teaching or specialist permits in accordance with regulations adopted by the commission corresponding to the credential types specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 44225, provided that all of the following conditions are met:

(1) The applicant possesses a baccalaureate degree conferred by a regionally accredited institution of higher education and has fulfilled the subject matter requirements of Section 44301.

(2) Successful passage of the state basic skills proficiency test as provided for in Section 44252.

(3) The commission approves the justification for the emergency permit submitted by the school district in which the applicant is to be employed. The justification shall include all of the following:

(A) Documentation that the district has made a diligent search for, but has been unable to recruit, a sufficient number of certificated teachers, including teacher candidates pursuing full certification through internship, district internship, or other alternative routes established by the commission.

(B) A declaration of need for fully qualified educators based on the documentation set forth in subparagraph (A) and made in the form of a motion adopted by the governing board of the district or the county board of education at a regularly scheduled meeting of the governing board or the county board of education. The motion may not be part of the consent agenda and shall be entered in the minutes of the meeting.

(b) The exclusive representative of certificated employees, if any, as provided under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, may submit a written statement to the commission agreeing or disagreeing with the justification submitted to the commission pursuant to paragraph (3) of subdivision (a).

(c) Commencing January 1, 1990, the commission may issue and renew emergency permits corresponding to the credential types specified in paragraphs (2), (3), and (4) of subdivision (b) of Section 44225. The commission shall establish appropriate standards for each type of emergency permit.

(d) Commencing January 1, 1990, a person holding an emergency teaching or specialist permit shall attend an orientation to the curriculum and to techniques of instruction and classroom management, and shall teach only with the assistance and guidance of a certificated employee of the district who has completed at least three years of full-time teaching experience, or the equivalent thereof. It is the intent of the Legislature to encourage districts to provide directed teaching experience to new emergency permitholders with no prior teaching experience.

(e) The holder of an emergency permit shall participate in ongoing training, coursework, or seminars designed to prepare the individual to become a fully credentialed teacher or other educator in the subject area or areas in which he or she is assigned to teach or serve. The employing agency shall verify that employees applying to renew their emergency permits are meeting these ongoing training requirements.

(f) Emergency permits for pupil personnel services shall not be valid for the purpose of determining pupil eligibility for placement in any special education class or program.

(g) This section shall not apply to the issuance of an emergency substitute teaching permit, or of an emergency permit to a teacher who has consented to teach temporarily outside of his or her field of certification, for which the commission shall establish minimum requirements.

(h) This article is repealed on July 1, 1994, or on the date that the commission certifies to the Legislature, whichever occurs later, that the alternative methods of teacher certification established by the commission under subdivision (g) of Section 44225, when combined with the supply of fully certificated teachers who did not pursue alternative paths to certification, are adequate to meet the needs of school districts.

CHAPTER 379

An act to amend Section 9889.62 of the Business and Professions Code, relating to automobiles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 9889.62 of the Business and Professions Code is amended to read:

9889.62. The director shall report findings and recommendations to the Legislature by July 1, 1994, at which time the voluntary advisory committee shall cease to exist.

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

In order to provide adequate time for preparation of the report of findings and recommendations to the Legislature, it is necessary that this act take effect immediately.

CHAPTER 380

An act to amend Section 17419 of the Financial Code, relating to escrow agents.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 17419 of the Financial Code is amended to read:

17419. On and after January 1, 1992, any person seeking employment with an escrow agent shall complete an employment application on or before the first day of employment which includes, at least, the following information. A copy of the employment application shall be forwarded to the commissioner on or before the first day of the applicant's employment. Persons required to file a statement of identity and questionnaire pursuant to subdivision (f) of Section 17209 or Section 17212.1 are not required to file the employment application set forth in this section. Each person completing the employment application shall be given the notice required by the Information Practices Act (Section 1798.17 of the Civil Code), copies of which may be obtained from the commissioner. Nothing in this section shall limit an escrow agent from requesting additional information from an applicant.

STATEMENT OF IDENTITY AND EMPLOYMENT APPLICATION

Name of Escrow Company: _____
Escrow Agent License Number: _____

1. Exact Full Name

_____

(Please Print or Type) First Name Middle Name Last Name

(Do not use initials or nicknames)

Title of position to be filled in connection with the preparation of this employment application.

_____

2. Employment for the last 10 years:

From	To	Employer Name and Address	Occupation and Duties
	Present		

NOTE: Attach separate schedule if space is not adequate.

3. Residence addresses for the last 10 years:

From	To	Street	City	State
	Present			

NOTE: Attach separate schedule if space is not adequate.

4. Have you ever been named in any order, judgment or decree of any court or any governmental agency or administrator, temporarily or permanently restraining or enjoining you from engaging in or continuing any conduct, practice or employment?

( ) Yes ( ) No

If the answer is "Yes", please complete the following:

Date of Suit: _____
Location of Court (City, County, State): _____
Nature of Suit: _____

Note: Attach a certified copy of any order, judgment, or decree.

5. Have you ever been refused a license to engage in any business in this state or any other state, or has any such license ever been suspended or revoked?

( ) Yes ( ) No

If the answer is "Yes," please complete the following:

State: _____ Title of State Department: _____

Nature of License and Number: _____

Note: Attach a certified copy of any order, judgment, or decree.

6. Have you ever been convicted of or pleaded nolo contendere to a misdemeanor or felony other than traffic violations?

NOTE: "Convicted" includes a verdict of guilty by judge or jury, a plea of guilty or of nolo contendere or a forfeiture of bail. All convictions must be disclosed even if the plea or verdict was thereafter set aside and the charges against you dismissed or expunged or if you have been pardoned. Convictions occurring while you were a minor must be disclosed unless the record of conviction has been sealed under Section 1203.45 of the California Penal Code or Section 781 of the California Welfare and Institutions Code.

( ) Yes ( ) No

If the answer is "Yes" please complete the following:

Date of Case: _____
Location of Court (City, County, State): _____
Nature of Case: _____

Note: Attach a certified copy of any order, judgment, or decree.

7. Have you ever been a defendant in a civil court action other than divorce, condemnation or personal injury?

( ) Yes ( ) No

If the answer is "Yes" please complete the following:

Date of Suit: _____
Location of Court (City, County, State): _____
Nature of Suit: _____

Note: Attach a certified copy of any order, judgment, or decree.

8. Have you ever changed your name or ever been known by any name other than that herein listed?
(Including a woman's maiden name)

( ) Yes ( ) No

If so, explain. Change in name through marriage or court order should also be listed.
EXACT DATE OF EACH NAME CHANGE MUST BE LISTED.

_____
_____

9. Have you ever done business under a fictitious firm name either as an individual or in the partnership or corporate form?

( ) Yes ( ) No

If the answer is "Yes" set forth particulars:

_____
_____

10. Have you ever been a subject of a bankruptcy or a petition in bankruptcy?

( ) Yes ( ) No

If the answer is "Yes" give date, title of case, location of bankruptcy filing:

_____
_____
_____

11. Have you ever been refused a bond, or have you ever had a bond revoked or canceled?

( ) Yes ( ) No

If the answer is "Yes" give details:

_____

_____

12. In what capacity will you be employed? _____
(e.g., Clerk, Escrow Officer, Receptionist, etc.)

13. Do you expect to be a party to, or broker or salesman in connection with escrows conducted by the escrow company which is employing you?

( ) Yes ( ) No

If the answer is "Yes" please explain:

_____

_____

_____

NOTE: Attach separate schedule if space is not adequate.

VERIFICATION

I, the undersigned, state that I am the person named in the foregoing Statement of Identity and Employment Application; that I have read and signed said Statement of Identify and Employment Application and know the contents thereof, including all exhibits attached thereto, and that the statements made therein, including any exhibits attached thereto, are true.

Any person who provides false information is guilty of a felony and shall, upon conviction, be fined not more than ten thousand dollars ($10,000) or imprisoned in the state prison for one year or more or in a county jail for not more than one year, or be punished by both such fine and imprisonment. Any person who knows or should have known of a violation of this section shall immediately report the violation in writing to the commissioner.

I certify/declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at _____
(City)

_____
(County) (State)

this _____ day of _____, 19____.

_____
(Signature of Declarant)

CHAPTER 381

An act to amend Sections 19770, 19771, 19775.1, 19775.3, 19775.6, 19776, 19780, 19781, 19782, 19783, 19785, and 19786 of the Government Code, and to amend Sections 395.1 and 395.3 of the Military and Veterans Code, relating to the military service.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 19770 of the Government Code is amended to read:

19770. (a) This part, rather than provisions of the Military and Veterans Code, governs leave for military service, rights and benefits accrued during that service, and reinstatement after that service, for executive branch employees. Both the State Personnel Board and the Department of Personnel Administration have responsibilities for carrying out certain provisions of this chapter as provided in subdivision (b).

(b) The State Personnel Board is responsible for the provisions of this chapter pertaining to civil service examinations, list eligibility, appointments, reinstatements, probationary periods, and status. The Department of Personnel Administration is responsible for the provisions of this chapter on eligibility for military leave and the effect of these leaves on the employee's salary, vacation, sick leave, and seniority.

(c) For the purposes of this chapter:

(1) "Employee" means that term as defined by subdivision (d) of Section 19815.

(2) "Civil service employee" means an employee legally holding a position in the state civil service.

(3) "Exempt employee" means an employee who is exempt from the state civil service by Section 4 of Article VII of the California Constitution.

SEC. 2. Section 19771 of the Government Code is amended to read:

19771. Upon presentation of a copy of orders for active duty in the armed forces, the National Guard, or the Naval Militia, the appointing power shall grant a military leave of absence for the period of active duty specified in the orders, but not to exceed four years for a permanent, probationary, or exempt employee, or for the remainder of a limited-term employee's appointment or a temporary employee's appointment.

SEC. 3. Section 19775.1 of the Government Code is amended to read:

19775.1. An employee who is granted a short-term military leave of absence for active military duty, but not for inactive duty,

including, but not limited to, scheduled reserve drill periods, and who for a period of not less than one year immediately prior to the effective date of active duty has had continuous state service as defined by Department of Personnel Administration rule that is not broken by a permanent separation, or who has had continuous state service immediately prior to the effective date of active duty not broken by a permanent separation and sufficient recognized military service that need not be contiguous to equal one year shall be entitled to receive his or her salary or compensation for the first 30 calendar days of active duty served during the absence.

An employee who is granted emergency military leave under Section 19773, shall receive his or her salary or compensation as a state employee while going to, engaging in, and returning from the duty. The employee shall not receive his or her salary or compensation for more than 30 days each time he or she is granted the emergency military leave.

SEC. 4. Section 19775.3 of the Government Code is amended to read:

19775.3. An employee who meets the conditions under Sections 19775 or 19775.1, or who is granted an emergency military leave shall receive the same vacation, sick leave, and other civil service status, rights and benefits as though he or she had remained in his or her position and not been on military leave except that his or her probationary period shall be extended by the length of the absence, and no more than six months of leave credits shall be granted.

SEC. 5. Section 19775.6 of the Government Code is amended to read:

19775.6. Time spent on military leave, including rehabilitation afforded by the United States or the state following recognized military service by any person having an absolute right to be restored to his or her former position, shall be considered as time spent in state service for the purpose of computing state service for a higher rate of vacation credit, other benefits accruing on the basis of state service, and rights to merit salary adjustments at the time of return to state service.

A veteran who was reinstated from military leave shall receive layoff seniority credits for the time spent on the leave on the same basis as if it were service in the employee's former position.

SEC. 6. Section 19776 of the Government Code is amended to read:

19776. If a promotional examination was held while an employee was on military leave that he or she would otherwise have been entitled to take, the employee shall be eligible to take the identical promotional examination within five years of the date of the original examination. The board shall arrange for him or her to take the examination within a reasonable time, provided application is made not later than six months after his or her reinstatement from military leave. If the employee qualifies in the examination, his or her name shall be placed on the open and promotional list that resulted from

the original examination, as the list stands at the time his or her name is placed thereon. If his or her rating is sufficiently high for his or her name to have been included on a certification to a permanent position while he or she was in the military service had his or her name been on the list when originally established, his or her eligibility shall be established, notwithstanding the removal of names from the original list pursuant to Section 18901. He or she shall retain his place on the list for three years from the termination of his or her service with the armed forces or one year from the date the eligibility is established, whichever is later. A name thus retained on a list, beyond the time other names are removed from the list pursuant to Section 18901, shall be removed if the person refuses to accept appointment to a permanent position after certification thereto subsequent to his or her discharge from the armed forces, or if he or she resigns from state service.

SEC. 7. Section 19780 of the Government Code is amended to read:

19780. Except as provided in Section 19781, a permanent, probationary, or exempt employee who begins active duty within 90 calendar days from the effective date of his or her long-term military leave or within 10 calendar days from the effective date of his or her short-term or emergency military leave and who returns to state service within six months after termination of military service under his or her long-term military leave or within 10 days after termination of military service under his or her short-term or emergency military leave shall be reinstated to his or her former position. Reinstatement to an employee's former exempt position under this section or Section 19783 shall reestablish the employee's tenure and civil service reinstatement rights, if any, as they existed immediately prior to his or her military leave pursuant to this section or resignation pursuant to Section 19783. For the purpose of this section any period of rehabilitation afforded by the United States or the state following active duty shall be considered as military service and termination of the state military emergency by the Governor shall be considered termination of military service.

SEC. 8. Section 19781 of the Government Code is amended to read:

19781. The rights and benefits provided a person in Sections 19775.5, 19775.9, 19780, and 19997.6 shall not extend to or be granted to a person, who after January 1, 1956, voluntarily requests and obtains an extension of his or her original term of enlistment, service, or tour of duty in the recognized military service of the United States.

These rights and benefits shall not extend to or be granted to a person who was on an indefinite tour of duty, or on a tour of duty in excess of four years' duration in the recognized military service as of January 1, 1956, and who continued on that duty after January 1, 1960.

These rights and benefits shall not extend to or be granted to a person who was ordered to, or enlisted in the recognized military

service after January 1, 1956, for an indefinite tour of duty or for a tour of duty in excess of four years' duration and who continues on that duty for more than four years from the first day of ordered active duty or enlistment.

Whenever the State Personnel Board or the Department of Personnel Administration finds that the time limitations imposed by this section are unreasonable to a person it shall be within the discretion of the board or the department to grant an extension of the rights and benefits to an individual for not to exceed three additional years. This section, rather than Section 395.1 of the Military and Veterans Code, governs the rights and benefits of state employees.

SEC. 9. Section 19782 of the Government Code is amended to read:

19782. A limited-term employee or temporary employee who begins active duty within 10 days from the effective date of his or her military leave and who returns to state service within 10 days after termination of military service or 30 days after any rehabilitation afforded by the United States or the state following the military service, shall be reinstated to the position and civil service status that he or she held on the effective date of leave, if the position has not expired or been abolished. In those instances, the employee is separated in the same manner he or she would have been separated had he or she not been in the military service.

SEC. 10. Section 19783 of the Government Code is amended to read:

19783. A permanent, probationary, or exempt employee who resigns from state service for the purpose of entering the recognized military service and begins active duty and returns to state service within the same time limits and conditions as provided in Section 19780 shall be reinstated to his or her former position. The employee shall not receive the rights and benefits provided under Sections 19775, 19775.1, and 19775.3.

SEC. 11. Section 19785 of the Government Code is amended to read:

19785. A civil service employee who is entitled to reinstatement under Section 19780 or 19782 shall be considered as a person serving in state civil service under Section 19050.9 when a function in which he or she was serving when he or she entered military service is transferred to another state agency and shall be reinstated in the other agency or shall be eligible for reemployment subject to Article 2 (commencing with Section 19997) of Chapter 7 of Part 2.6 if the function of the state agency is abolished pursuant to law.

SEC. 12. Section 19786 of the Government Code is amended to read:

19786. When a civil service employee has been reinstated after military service in accordance with Section 19780, and any question arises relative to his or her ability or inability for any reason arising out of the military service to perform the duties of the position to

which he or she has been reinstated, the board shall, upon the request of the appointing power or of the employee, hear the matter and may on its own motion or at the request of either party take any and all necessary testimony of every nature necessary to a decision on the question. If the board finds that the employee is not able for any reason arising out of the military service to carry out the usual duties of the position he or she then holds, it shall order the employee placed in a position in which the board finds he or she is capable of performing the duties in the same class or a comparable class in the same or any other state department, bureau, board, commission, or office under this part and the rules of the board covering transfer of an employee from a position under the jurisdiction of one appointing power to a position under the jurisdiction of another appointing power, without the consent of the appointing powers, where a vacancy may be made available to him or her under this part and the rules of the board, but in no event shall the transfer constitute a promotion within the meaning of this part and the rules of the board. If a layoff is made necessary to place a civil service employee in a position in the same class or a comparable class in accordance with this section, the layoff shall be made under Section 19997.3, provided that no civil service employee who was employed prior to September 16, 1940, shall be laid off as a result of the placing of an employee in the same class or a comparable class under this section.

The board may order the civil service employee reinstated to the department, bureau, board, commission, or office from which he or she was transferred either upon request of the employee or the appointing power from which transferred. The reinstatement may be made after a hearing as provided in this section if the board finds that the employee is at the time of the hearing able to perform the duties of the position.

SEC. 13. Section 395.1 of the Military and Veterans Code is amended to read:

395.1. (a) Notwithstanding any other provision of law to the contrary, any officer or employee of the state not subject to Chapter 11 (commencing with Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code, or any public officer, deputy, assistant, or employee of any city, county, city and county, school district, water district, irrigation district, or any other district, political corporation, political subdivision, or governmental agency thereof who, in time of war or national emergency as proclaimed by the President or Congress, or when any of the armed forces of the United States are serving outside of the United States or their territories pursuant to order or request of the United Nations, or while any national conscription act is in effect, leaves or has left his or her office or position prior to the end of the war, or the termination of the national emergency or during the effective period of any the order or request of the United Nations or prior to the expiration of the National Conscription Act, to join the armed forces of the United States and who does or did without unreasonable and unnecessary

delay join the armed forces or, being a member of any reserve force or corps of any of the armed forces of the United States or of the militia of this state, is or was ordered to duty therewith by competent military authority and served or serves in compliance with those orders, shall have a right, if released, separated or discharged under conditions other than dishonorable, to return to and reenter upon the office or position within six months after the termination of his or her active service with the armed forces, but not later than six months after the end of the war or national emergency or military or police operations under the United Nations or after the Governor finds and proclaims that, for the purposes of this section, the war, national emergency, or United Nations military or police operation no longer exists, or after the expiration of the National Conscription Act, if the term for which he or she was elected or appointed has not ended during his or her absence; provided, that the right to return to and reenter upon the office or position shall not extend to or be granted to any officer or employee of the state not subject to Chapter 11 (commencing with Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code, or any public officer, deputy, assistant, or employee of any city, county, city and county, school district, water district, irrigation district or any other district, political corporation, political subdivision or governmental agency thereof, who shall fail to return to and reenter upon his or her office or position within 12 months after the first date upon which he or she could terminate or could cause to have terminated his or her active service with the armed forces of the United States or of the militia of this state. He or she shall also have a right to return to and reenter upon the office or position during terminal leave from the armed forces and prior to discharge, separation or release therefrom.

(b) Upon return and reentry to the office or employment the officer or employee shall have all of the rights and privileges in, connected with, or arising out of the office or employment which he or she would have enjoyed if he or she had not been absent therefrom; provided, however, the officer or employee shall not be entitled to sick leave, vacation or salary for the period during which he or she was on leave from that governmental service and in the service of the armed forces of the United States.

If the office or position has been abolished or otherwise has ceased to exist during his or her absence, he or she shall be reinstated in a position of like seniority, status and pay if the position exists, or to a comparable vacant position for which he or she is qualified.

(c) Any officer or employee other than a probationer who is restored to his or her office or employment pursuant to this act shall not be discharged from that office or position without cause within one year after the restoration, and shall be entitled to participate in insurance or other benefits offered by the employing governmental agency pursuant to established rules and practices relating to those officers or employees on furlough or leave of absence in effect at the time the officer or employee left his or her office or position to join

the armed forces of the United States.

(d) Notwithstanding any other provisions of this code, any enlisted person who was involuntarily ordered to active duty (other than for training) for a stated duration shall not lose any right or benefit conferred under this code if he or she voluntarily elects to complete the period of that duty.

(e) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 14. Section 395.3 of the Military and Veterans Code is amended to read:

395.3. In the event that any public officer or employee has resigned or resigns his or her office or employment to serve or to continue to serve in the armed forces of the United States or in the armed forces of this state, he or she shall have a right to return to and reenter the office or employment prior to the time at which his or her term of office or his employment would have ended if he or she had not resigned, on serving a written notice to that effect upon the authorized appointing power, or if there is no authorized appointing power, upon the officer or agency having power to fill a vacancy in the office or employment, within six months of the termination of his or her active service with the armed forces; provided, that the right to return and reenter upon the office or position shall not extend to or be granted to any public officer or employee, who shall fail to return to and reenter upon his or her office or position within 12 months after the first date upon which he or she could terminate or could cause to have terminated his or her active service with the armed forces of the United States or of the militia of this state.

As used in this section, "public officers and employees" includes all of the following:

(a) Members of the Senate and of the Assembly.

(b) Justices of the Supreme Court and the courts of appeal, judges of the superior courts and of the municipal courts, and all other judicial officers.

(c) All other state officers and employees not within Chapter 11 (commencing with Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code, including all officers for whose selection and term of office provision is made in the Constitution and laws of this state.

(d) All officers and employees of any county, city and county, city, township, district, political subdivision, authority, commission, board, or other public agency within this state.

The right of reentry into public office or employment provided for in this section shall include the right to be restored to the civil service

status as the officer or employee would have if he or she had not so resigned; and no other person shall acquire civil service status in the same position so as to deprive the officer or employee of his or her right to restoration as provided for herein.

This section shall be retroactively applied to extend the right of reentry into public office or employment to public officers and employees who resigned prior to its effective date.

This section does not apply to any public officer or employee to whom the right to reenter public office or employment after service in the armed forces has been granted by any other provision of law.

If any provision of this section, or the application of this section to any person or circumstance, is held invalid, the remainder of this section, or the application of this section to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 15. This act shall apply only to military leaves commencing after January 1, 1994.

SEC. 16. This act shall apply only to the extent permitted by federal law.

CHAPTER 382

An act to amend Section 2883 of the Civil Code, relating to liens.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 2883 of the Civil Code is amended to read:

2883. (a) An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In that case, the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest.

(b) For purposes of subdivision (a), an agreement by a beneficiary of an estate that is subject to administration, as provided in Division 7 (commencing with Section 7000) of the Probate Code, to create a lien upon real property in the estate that is undistributed at the time the agreement is entered into, shall create no lien upon

the real property unless and until the real property is distributed to that beneficiary. Upon recordation of an order confirming the sale of the real property pursuant to Section 10313 of the Probate Code and the recording of a duly executed deed in accordance therewith, any expectancy of a lien in the real property under the agreement shall be extinguished.

CHAPTER 383

An act to amend Section 5023 of the Vehicle Code, relating to vehicles, and making an appropriation therefor.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 5023 of the Vehicle Code is amended to read:

5023. (a) Any person described in Section 5101 may also apply for a set of commemorative Olympic reflectorized license plates and the department shall issue those special license plates in lieu of regular license plates. The commemorative Olympic reflectorized license plates shall be of a distinctive design and shall be available in a special series of letters or numbers, or both, as determined by the department after consultation with the United States Olympic Committee.

(b) In addition to the regular fees for an original registration or renewal of registration, the following special fees shall be paid:

(1) One hundred dollars ($100), inclusive of any administrative fees, for the initial issuance of the special plates.

(2) Fifteen dollars ($15) for the transfer of the special plates to another vehicle.

(3) Thirty-five dollars ($35) for duplicate, replacement commemorative Olympic reflectorized license plates of the same number in the series.

(4) Thirty dollars ($30) for the annual renewal of the special plates.

(c) When payment of renewal fees is not required as specified in Section 4000, or when the person determines to retain the plates upon sale, trade, or other release of the vehicle upon which the special plates have been displayed, the person shall notify the department and the person may retain the special plates.

(d) All revenue derived from the additional special fees provided in this section, less costs incurred by the department pursuant to this section, shall be deposited in the California Olympic Training Account in the General Fund established pursuant to Section 7592 of the Government Code.

(e) The department shall report to the Legislature the number of commemorative plates that have been issued and renewed pursuant to this section, the total revenue received for the issuance and renewal, the costs incurred by the department, and the amount deposited in the California Olympic Training Account.

The first report shall be submitted to the Legislature on December 31, 1991, and a report shall be submitted every two years thereafter, with a final report to be submitted on December 31, 2011.

CHAPTER 384

An act to amend Sections 8560, 8590, and 8673 of, and to add Sections 8663 and 8664 to, the Business and Professions Code, relating to pest control, and making an appropriation therefor.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 8560 of the Business and Professions Code is amended to read:

8560. (a) Licenses issued to operators or field representatives shall be limited to the branch or branches of pest control for which the applicant or a wood roof cleaning and treatment registered company has qualified by application and examination.

(1) For the purpose of delimiting the type and character of work authorized by the various branch licenses hereinafter set forth, the practice of pest control is classified into the following branches, namely:

Branch 1. Fumigation. The practice relating to the control of household and wood destroying pests or organisms by fumigation with poisonous or lethal gases.

Branch 2. General pest. The practice relating to the control of household pests, excluding fumigation with poisonous or lethal gases.

Branch 3. Termite. The practice relating to the control of wood destroying pests or organisms by the use of insecticides, or structural repairs and corrections, excluding fumigation with poisonous or lethal gases.

(2) For the purposes of delimiting the type and character of work authorized for wood roof cleaning and treatment registered companies, the following apply:

The practice of inspecting wood shake or shingle roofs to determine the presence or absence of (i) wood destroying organisms including decay fungi on the wood shakes or shingles, and resulting decay, and (ii) nondecay fungi including mold, mildew, lichen, or moss; cleaning the wood shakes or shingles; and applying wood preservatives to the wood shakes or shingles to prevent infection of

wood destroying organisms or nondecay fungi or further damage from wood destroying organisms.

(b) The board may issue a license for a combination of two or more licenses for which an applicant qualifies under the provisions of this chapter, and such combination license shall be considered one license for the purpose of determining the fee to be charged under Section 8674.

(c) Unless otherwise authorized by the board, all written examinations shall be in ink in books supplied by the board. All examination papers shall be kept for a period of one year, upon the expiration of which such papers may be destroyed on order of the board. Each applicant for license shall be designated by a number instead of by name, and the identity thereof shall not be disclosed until the examination papers are graded. No person shall be admitted to the examination room except members of the board, the examining personnel, and the applicants for license.

(d) The board shall make rules and regulations for the purpose of securing fair, impartial, and proper examinations.

(e) Licensees may be licensed in other branches or as a wood roof cleaning and treatment registered company upon complying with the requirements for qualification and by examination in those other branches, or a wood roof cleaning and treatment registered company. No failure of the licensee to pass examination in such other branch or branches shall have any effect on existing licenses.

(f) The examination shall be in each of the subjects specified in the branch, branches, or wood roof cleaning and treatment registered company relating to the respective applications. License according to such applications shall be granted to any applicant who shall make a general average of not less than 70 percent on each of the subjects of such branch or branches.

SEC. 2. Section 8590 of the Business and Professions Code is amended to read:

8590. Except as otherwise provided herein, all licenses issued under the provisions of this chapter shall expire on June 30th of every third year.

An individual licensed as both an operator and a field representative may request that both licenses expire on the same date. The date requested shall be the date of the earliest expiration.

Every operator and every field representative shall pay a fee for the renewal of his or her license.

The board shall on or before the first day of June of each year mail to each operator and field representative whose license will expire in such year, addressed to him or her at his or her last known address, a notice that his or her renewal fee is due and payable and that, if not paid by the 30th of June, a penalty will be added thereto.

In no case shall the penalty be waived.

Upon the receipt of the fee the board shall cause the renewal certificate to be issued.

SEC. 3. Section 8663 is added to the Business and Professions

Code, to read:

8663. (a) This section only applies to work conducted under a Branch 1 license.

(b) The board or county commissioners, when acting pursuant to Section 8616.4 may levy a fine of up to five hundred dollars ($500) against a registered company acting as a prime contractor for any major violation committed by any licensee with whom he or she has subcontracted if, before that violation occurred, the prime contractor had been notified by certified mail, return receipt requested, of more than two major violations committed by the subcontractor within 12 consecutive months.

Fines collected pursuant to this section shall be paid to the Education and Enforcement Account in the Structural Pest Control Education and Enforcement Fund.

(c) For purposes of this section, "major violation" means a violation of any of the following provisions of this code or of the California Code of Regulations that poses a serious hazard to humans:

(1) A violation of subdivision (a) or (b) of Section 1970.4 of Title 16 of, or Section 6454 or 6455 of Title 3 of, the California Code of Regulations, or a violation of Section 8505.5.

(2) Any violation of the structural pest control law that results in a serious injury to any person.

(3) A violation of Section 8505.2 or 8505.3, relating to direct and personal supervision.

(4) A violation of Section 8505.7, relating to vacating and securing structures.

(5) A violation of subdivision (a) of Section 6780 of Title 3 of the California Code of Regulations.

(6) A violation of subparagraph (B) of paragraph (1) of subdivision (c) of, or subdivision (e) of, Section 6454 of, or a violation of subparagraph (C) or clause (i) of subparagraph (D) of paragraph (1) of subdivision (b) of Section 6455 of, or a violation of subdivision (c) of Section 6455 of, Title 3 of the California Code of Regulations.

(7) A violation of Section 8505.12, relating to warning agents.

(8) A violation of Section 8505.9 or 8505.10, relating to warning signs.

(d) A copy of a notice of violation issued for any violation committed by a subcontractor shall be sent by certified mail to the prime contractor by the issuing authority within 15 days from the date the violation was committed.

(e) Notwithstanding subdivision (b), a prime contractor may be fined for a subcontractor's first violation for failing to have a signed factsheet on the premises being treated, or if the subcontractor fails to provide advance notice of a treatment to the occupants of the premises being treated.

SEC. 4. Section 8664 is added to the Business and Professions Code, to read:

8664. (a) This section only applies to work conducted under a Branch 1 license.

(b) Before a fine can be levied pursuant to Section 8663, the prime contractor shall be provided notice of the nature of the violation and shall be given an opportunity to be heard, including the right to review the commissioner's evidence and a right to present evidence on his or her own behalf.

(c) The prime contractor may appeal the fine to the Disciplinary Review Committee and shall be subject to the procedures in Section 8662.

(d) If a fine is ordered, it may not take effect until 20 days after the date of the decision provided that no appeal is filed. If an appeal is filed pursuant to Section 8662, the order shall be stayed until 20 days after the committee has ruled on the appeal.

(e) Once final action is taken pursuant to this section, no other administrative or civil action may be taken by any state governmental agency for the same violation. However, action taken pursuant to this section may be used by the board as evidence of prior discipline, and multiple local actions may be the basis for statewide disciplinary action by the board pursuant to Section 8620. A certified copy of the fine order issued pursuant to this section or Section 8662 shall constitute conclusive evidence of the occurrence of the violation.

SEC. 5. Section 8673 of the Business and Professions Code is amended to read:

8673. License fees shall not be prorated unless an individual licensed as an operator and a field representative requests an earlier expiration date of one of the licenses in accordance with Section 8590. All license and registration fees shall be paid in advance of the issuance of the license or registration, and all examination fees shall be paid in advance of the examination.

CHAPTER 385

An act to amend Section 14105.97 of the Welfare and Institutions Code, relating to Medi-Cal, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. The Legislature finds and declares that recent changes to hospital financial reporting requirements necessitate corresponding changes in the method used to calculate Medi-Cal hospital outpatient disproportionate share payment amounts, thereby helping to ensure that these payments are consistent with the goals of efficiency, economy, quality of care, and access to care.

SEC. 2. Section 14105.97 of the Welfare and Institutions Code is

amended to read:

14105.97. (a) The department shall annually develop an outpatient disproportionate share factor for each hospital in California that receives Medi-Cal payments for outpatient services. That factor shall be the ratio of the sum of Medi-Cal gross outpatient revenue, county indigent programs gross outpatient revenue, and the outpatient component of other charity deductions from revenue, to total gross outpatient revenue. A hospital with a disproportionate factor that exceeds the mean factor for all hospitals in the state shall receive supplemental Medi-Cal payments in direct proportion to the level of the hospital's disproportionate factor. This subdivision shall only apply to payments for services provided by disproportionate share hospitals on or after July 1, 1993.

(b) Notwithstanding subdivision (a), the outpatient disproportionate share factors for children's hospitals shall be no less than the amounts that would have been established had the disproportionate factors for all hospitals been computed as the ratio of the sum of Medi-Cal gross outpatient revenue, the outpatient component of county indigent programs contractual adjustments, and the outpatient component of other charity deductions from revenue, to total gross outpatient revenue.

(c) The outpatient component of county indigent programs contractual adjustments shall be determined by calculating the ratio of county indigent programs gross outpatient revenue to county indigent programs gross total revenue, by multiplying that ratio by county indigent programs contractual adjustments. The outpatient component of other charity deductions from revenue shall be determined by calculating the ratio of other payors gross outpatient revenue to other payors gross total revenue, and multiplying that ratio by the sum of other charity deductions from revenue and teaching allowances for University of California teaching hospitals.

(d) For purposes of computing the outpatient disproportionate share factors, the department shall use the data from the Office of Statewide Health Planning and Development quarterly financial and utilization reports, as adjusted by the office for the calendar year preceding the state fiscal year in which the disproportionate factors will be effective. The department shall use the data existing on the office's statewide data base as of April 15 of each year. For the purposes of this section, a hospital shall submit to the office by April 1 of each year any adjustments to its quarterly reports for the preceding calendar year. The office shall make its statewide data base, as adjusted, available to the department by April 20 of each year.

(e) Augmentation rates shall be applied to hospitals with all inclusive rates at the point of final audit settlement and shall be included in subsequent interim reimbursement rates.

(f) (1) If the department deems it necessary to issue general rules in order to implement, interpret, or make specific this section or to establish procedures to implement this section, these rules may

be issued without complying with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) and shall remain in effect for a period of 180 days.

(2) Thereafter, any rules that are necessary to implement, interpret, or make specific this section or that govern departmental procedures shall be adopted in compliance with the Administrative Procedure Act.

(3) The adoption, pursuant to paragraph (1), of any emergency regulations that are filed with the Office of Administrative Law within one year of the effective date of this act shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or safety.

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

In order to make equitable and achievable the development of an outpatient disproportionate provider factor for purposes of Medi-Cal reimbursement, as authorized under existing law, thus aiding critically needed disproportionate share facilities in providing access to health care at the earliest possible time, it is necessary that this act go into immediate effect.

CHAPTER 386

An act to add Sections 250 and 671 to, and to add Chapter 3.5 (commencing with Section 10801) to Division 4 of, the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 250 is added to the Vehicle Code, to read:

250. A "chop shop" is any building, lot, or other premises where any person has been engaged in altering, destroying, disassembling, dismantling, reassembling, or storing any motor vehicle or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud, in order to do either of the following:

(a) Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number, of a motor vehicle or motor vehicle part, in order to misrepresent the identity of the motor vehicle or motor vehicle part, or to prevent the identification of the motor vehicle or motor vehicle part.

(b) Sell or dispose of the motor vehicle or motor vehicle part.

SEC. 2. Section 671 is added to the Vehicle Code, to read:

671. A "vehicle identification number" is the motor number, serial number, or other distinguishing number, letter, mark, character, or datum, or any combination thereof, required or employed by the manufacturer or the department for the purpose of uniquely identifying a motor vehicle or motor vehicle part or for the purpose of registration.

SEC. 3. Chapter 3.5 (commencing with Section 10801) is added to Division 4 of the Vehicle Code, to read:

CHAPTER 3.5. MOTOR VEHICLE CHOP SHOPS

10801. Any person who knowingly and intentionally owns or operates a chop shop is guilty of a public offense and, upon conviction, shall be punished by imprisonment in the state prison for two, three, or four years, or by a fine of not more than fifty thousand dollars ($50,000), or by both the fine and imprisonment, or by up to one year in the county jail, or by a fine of not more than one thousand dollars ($1,000), or by both the fine and imprisonment.

10802. Any person who knowingly alters, counterfeits, defaces, destroys, disguises, falsifies, forges, obliterates, or removes vehicle identification numbers, with the intent to misrepresent the identity or prevent the identification of motor vehicles or motor vehicle parts, for the purpose of sale, transfer, import, or export, is guilty of a public offense and, upon conviction, shall be punished by imprisonment in the state prison for 16 months, or two or three years, or by a fine of not more than twenty-five thousand dollars ($25,000), or by both the fine and imprisonment, or by up to one year in the county jail, or by a fine of not more than one thousand dollars ($1,000), or by both the fine and imprisonment.

10803. (a) Any person who buys with the intent to resell, disposes of, sells, or transfers, more than one motor vehicle or parts from more than one motor vehicle, with the knowledge that the vehicle identification numbers of the motor vehicles or motor vehicle parts have been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed for the purpose of misrepresenting the identity or preventing the identification of the motor vehicles or motor vehicle parts, is guilty of a public offense and, upon conviction, shall be punished by imprisonment in the state prison for two, four, or six years, or by a fine of not more than sixty thousand dollars ($60,000), or by both the fine and imprisonment, or by up to one year in the county jail, or by a fine of not more than one thousand dollars ($1,000), or by both the fine and imprisonment.

(b) Any person who possesses, for the purpose of sale, transfer, import, or export, more than one motor vehicle or parts from more than one motor vehicle, with the knowledge that the vehicle identification numbers of the motor vehicles or motor vehicle parts have been altered, counterfeited, defaced, destroyed, disguised,

falsified, forged, obliterated, or removed for the purpose of misrepresenting the identity or preventing the identification of the motor vehicles or motor vehicle parts, is guilty of a public offense and, upon conviction, shall be punished by imprisonment in the state prison for 16 months, or two or three years, or by a fine of not more than thirty thousand dollars ($30,000), or by both the fine and imprisonment, or by imprisonment in the county jail not exceeding one year or by a fine of not more than one thousand dollars ($1,000) or by both the fine and imprisonment.

10804. (a) Section 10803 does not apply to a motor vehicle scrap processor who, in the normal legal course of business and in good faith, processes a motor vehicle or motor vehicle part by crushing, compacting, or other similar methods, if any vehicle identification number is not removed from the motor vehicle or motor vehicle part prior to or during the processing.

(b) Section 10803 does not apply to any owner or authorized possessor of a motor vehicle or motor vehicle part which has been recovered by law enforcement authorities after having been stolen or if the condition of the vehicle identification number of the motor vehicle or motor vehicle part is known to, or has been reported to, law enforcement authorities. Law enforcement authorities are presumed to have knowledge of all vehicle identification numbers on a motor vehicle or motor vehicle part which are altered, counterfeited, defaced, disguised, falsified, forged, obliterated, or removed, when law enforcement authorities deliver or return the motor vehicle or motor vehicle part to its owner or an authorized possessor after it has been recovered by law enforcement authorities after having been reported stolen.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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

In order to immediately address the rising problem of automobile thefts, it is necessary that this act take effect immediately.

CHAPTER 387

An act to amend Sections 408, 532.1, 1605.5, 2191.3, and 5142 of, to add Sections 169, 531.8, 1605.6, and 5153 to, and to add Part 14 (commencing with Section 5900) to Division 1 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 169 is added to the Revenue and Taxation Code, to read:

169. The board shall encourage uniform statewide appraisal and assessment practices.

SEC. 2. Section 408 of the Revenue and Taxation Code is amended to read:

408. (a) Except as otherwise provided in subdivisions (b), (c), (d), and (e) any information and records in the assessor's office which are not required by law to be kept or prepared by the assessor, and homeowners' exemption claims, are not public documents and shall not be open to public inspection. Property receiving the homeowners' exemption shall be clearly identified on the assessment roll. The assessor shall maintain records which shall be open to public inspection to identify those claimants who have been granted the homeowners' exemption.

(b) The assessor may provide any appraisal data in his or her possession to the assessor of any county.

The assessor shall disclose information, furnish abstracts, or permit access to all records in his or her office to law enforcement agencies, the county grand jury, the board of supervisors or their duly authorized agents, employees or representatives when conducting an investigation of the assessor's office pursuant to Section 25303 of the Government Code, the Controller, employees of the Controller for property tax postponement purposes, probate referees, employees of the Franchise Tax Board for tax administration purposes only, staff appraisers of the Department of Savings and Loan, the Department of Transportation, the Department of General Services, the State Board of Equalization, and other duly authorized legislative or administrative bodies of the state pursuant to their authorization to examine the records. Whenever the assessor discloses information, furnishes abstracts, or permits access to records in his or her office to staff appraisers of the Department of Savings and Loan, the Department of Transportation, or the Department of General Services pursuant to this section, the department shall reimburse the assessor for any costs incurred as a result thereof.

(c) Upon the request of the tax collector, the assessor shall disclose

and provide to the tax collector information used in the preparation of that portion of the unsecured roll for which the taxes thereon are delinquent. The tax collector shall certify to the assessor that he or she needs the information requested for the enforcement of the assessor's tax lien in collecting those delinquent taxes. Information requested by the tax collector may include social security numbers, and the assessor shall recover from the tax collector his or her actual and reasonable costs for providing the information. The tax collector shall add the costs described in the preceding sentence to the assessee's delinquent tax lien and collect those costs subject to subdivision (e) of Section 2922.

(d) The assessor shall, upon the request of an assessee or his or her designated representative, permit the assessee or representative to inspect or copy any market data in the assessor's possession. For purposes of this subdivision, "market data" means any information in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of that property, the date of the sale, and the consideration paid for the property, whether paid in money or otherwise. However for purposes of providing market data, the assessor shall not display any document relating to the business affairs or property of another.

(e) With respect to information, documents, and records, other than market data as defined in subdivision (d), the assessor shall, upon request of an assessee of property, or his or her designated representative, permit the assessee or representative to inspect or copy all information, documents, and records, including auditors' narrations and workpapers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any penalties and interest thereon. However, except as provided in Section 408.1, an assessee, or his or her designated representative, shall not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.

(f) (1) Permission for the inspection or copying requested pursuant to subdivision (d) or (e) shall be granted as soon as reasonably possible to the assessee or his or her designated representative.

(2) If the assessee, or his or her designated representative, requests the assessor to make copies of any of the requested records, the assessee shall reimburse the assessor for the reasonable costs incurred in reproducing and providing the copies.

SEC. 3. Section 531.8 is added to the Revenue and Taxation Code,

to read:

531.8. No escape assessment shall be levied under this article before 10 days after the assessor has mailed or otherwise delivered to the affected taxpayer a "Notice of Proposed Escape Assessment" with respect to one or more specified tax years. The notice shall prominently display on its face the following heading:

"NOTICE OF PROPOSED ESCAPE ASSESSMENT"

The notice shall contain all of the following:

(a) The amount of the proposed escape assessments for each tax year at issue.

(b) The name and phone number of a person at the assessor's office who is knowledgeable with respect to the proposed escape assessment or assessments and may be contacted with any questions with respect to the proposed assessment or assessments.

SEC. 4. Section 532.1 of the Revenue and Taxation Code is amended to read:

532.1. (a) If, before the expiration of the period specified in Section 532 for making an escape assessment, the taxpayer and the assessor have agreed in writing to extend the time for making an assessment, correction, or claim for refund, the assessment may be made at any time prior to the expiration of the period agreed upon. The period may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(b) If the assessor mails or otherwise delivers a "Notice of Proposed Escape Assessment" under Section 531.8 as to any assessment year for which the period for making an escape assessment, including any extension pursuant to subdivision (a), will expire in less than 90 days after the date of mailing or delivery of that notice, then that period, and any limitations period on the filing of a refund claim with respect to the same assessment year, shall be extended to the 90th day after the date of mailing or delivery. Subsequent mailings or deliveries of a "Notice of Proposed Escape Assessment" for the same assessment year shall not establish any further extension.

SEC. 5. Section 1605.5 of the Revenue and Taxation Code is amended to read:

1605.5. (a) (1) The county board shall hear applications for a reduction in an assessment in cases in which the issue is whether or not property has been subject to a change in ownership, as defined in Chapter 2 (commencing with Section 60) of Part 0.5, or has been newly constructed, as defined in Chapter 3 (commencing with Section 70) of Part 0.5.

(2) In any county that has established an assessment appeals board, the board of supervisors may, by ordinance, provide that it shall act as the county board of equalization for the purpose of hearing applications pursuant to this subdivision.

(3) This subdivision shall not be construed to alter, modify, or

eliminate the right of an applicant under existing law to have a trial de novo in superior court with regard to the legal issue of whether or not that property has undergone a change in ownership or has been newly constructed so as to require reassessment.

(b) The county board shall hear and decide issues with respect to penalties assessed under Section 463, 482, or 504 where those issues arise in connection with an application timely filed under Section 1603 or 1605. The county board shall hear and decide penalty issues under this subdivision regardless of whether the taxpayer has filed an application for reduction disputing only penalty amounts or, during the appeal process, all nonpenalty issues are resolved.

SEC. 6. Section 1605.6 is added to the Revenue and Taxation Code, to read:

1605.6. After the filing of an application for reduction of an assessment, the clerk of the county board of equalization shall set the matter for hearing and notify the applicant, or his or her designated representative, of the time and date of the hearing. Notice of the time, date, and place of the hearing shall be given not less than 45 days prior to the hearing, unless the assessor and the applicant, or the applicant's designated representative, stipulate orally or in writing to a shorter notice period. If the hearing on a particular application is vacated for any reason, the clerk of the county board of equalization shall notify the applicant, or the applicant's designated representative, of the new time, date, and place of the hearing not less than 10 days prior to the new hearing date, unless the assessor and the applicant, or the applicant's designated representative, stipulate orally or in writing to a shorter notice period, or the application has been heard by a hearing officer in accordance with Article 1.7 (commencing with Section 1636).

SEC. 7. Section 2191.3 of the Revenue and Taxation Code is amended to read:

2191.3. (a) The tax collector may make the filing specified in subdivision (b) where either of the following occurs:

(1) There is a tax on any of the following:

(A) A possessory interest secured only by a lien on that taxed possessory interest.

(B) Goods in transit, not secured by any lien on real property.

(C) Improvements that have been assessed pursuant to Section 2188.2.

(D) Off-roll taxes on escape assessments where the error was not the fault of the assessee and the escape taxes are being paid pursuant to Section 4837.5.

(E) Unsecured property not secured by a lien on any real property, and where the tax has become delinquent.

(F) Unsecured property not secured by a lien on any real property, and the tax has become delinquent.

(2) A tax has been entered on the unsecured roll pursuant to Section 482, 531.2, or 4836.5, or transferred to the unsecured roll pursuant to any provision of law.

(b) A filing for record without fee in the office of the county recorder of any county of a certificate specifying the amount due, the name, federal social security number, if known, and last known address of the assessee liable for the amount, and compliance with all provisions of this division with respect to the computation and levy of the tax if compliance has in fact occurred. The procedure authorized by this section is cumulative to the procedure provided by Sections 2951 and 3003. The county recorder shall, within 30 days after a filing as described in this subdivision with respect to delinquent taxes on unsecured property, send a notice of the filing to the assessee at the assessee's last known address. The notice shall contain the information contained in the filing, and shall prominently display on its face the following heading:

"THIS IS TO NOTIFY YOU THAT A TAX LIEN HAS BEEN FILED WITH RESPECT TO UNSECURED PROPERTY"

SEC. 8. Section 5142 of the Revenue and Taxation Code is amended to read:

5142. (a) No action shall be commenced or maintained under this article, except under Section 5148, unless a claim for refund has first been filed pursuant to Article 1 (commencing with Section 5096).

No recovery shall be allowed in any refund action upon any ground not specified in the refund claim.

(b) When the person affected or his or her agent and the assessor stipulate that an application involves only nonvaluation issues, they may file a stipulation with the county board of equalization stating that issues in dispute do not involve valuation questions. To the extent possible, the stipulation shall also indicate the parties' agreement as to the assessment amounts that would result under their respective positions on the issue or issues in dispute. The board shall accept or reject the stipulation, with or without conducting a hearing on the stipulation. The filing of, and the acceptance by the board of, a stipulation shall be deemed compliance with the requirement that the person affected file and prosecute an application for reduction under Chapter 1 (commencing with Section 1601) of Part 3 in order to exhaust administrative remedies. However, the filing of, and the acceptance by the board of, a stipulation under this subdivision shall not excuse or waive the requirement of a timely filing of a claim for refund.

(c) Nothing in this subdivision shall be construed to deprive the county board of equalization of jurisdiction over nonvaluation issues in the absence of a contrary stipulation.

SEC. 9. Section 5153 is added to the Revenue and Taxation Code, to read:

5153. Notwithstanding Sections 5150 and 5151, whenever the auditor has impounded revenues pursuant to subdivision (a) of Section 26906.1 of the Government Code and those revenues are

ultimately used to provide a refund of tax to the affected taxpayer or taxpayers, interest due to the taxpayer or taxpayers for the period that those funds were impounded shall be calculated and paid at the rate, or rates where the applicable rate fluctuated, earned by the county on those revenues during the period of impoundment.

SEC. 10. Part 14 (commencing with Section 5900) is added to Division 1 of the Revenue and Taxation Code, to read:

PART 14. PROPERTY TAXPAYERS' BILL OF RIGHTS

5900. This part shall be known and may be cited as "The Morgan Property Taxpayers' Bill of Rights."

5901. The Legislature finds and declares as follows:

(a) Taxes are a sensitive point of contact between citizens and their government, and disputes and disagreements often arise as a result of misunderstandings or miscommunications.

(b) The dissemination of information to taxpayers regarding property taxes and the promotion of enhanced understanding regarding the property tax system will improve the relationship between taxpayers and the government.

(c) The proper assessment and collection of property taxes is essential to local government and the health and welfare of the citizens of this state.

(d) It is the intent of the Legislature to promote the proper assessment and collection of property taxes throughout this state by advancing, to the extent feasible, uniform practices of property tax appraisal and assessment.

5902. This part shall be administered by the board.

5903. "Advocate" as used in this part means the "Property Taxpayers' Advocate" designated pursuant to Section 5904.

5904. (a) The board shall designate a "Property Taxpayers' Advocate." The advocate shall be responsible for reviewing the adequacy of procedures for both of the following:

(1) The distribution of information regarding property tax assessment matters between and among the board, assessors, and taxpayers.

(2) The prompt resolution of board, assessor, and taxpayer inquiries, and taxpayer complaints and problems.

(b) The advocate shall be designated by, and report directly to, the executive officer of the board. The advocate shall at least annually report to the executive officer on the adequacy of existing procedures, or the need for additional or revised procedures, to accomplish the objectives of this part.

(c) Nothing in this part shall be construed to require the board to reassign property tax program responsibilities within its existing organizational structure.

5905. In addition to any other duties imposed by this part, the advocate shall periodically review and report on the adequacy of existing procedures, or the need for additional or revised procedures,

with respect to the following:

(a) The development and implementation of educational and informational programs on property tax assessment matters for the benefit of the board and its staff, assessors and their staffs, local boards of equalization and assessment appeals boards, and taxpayers.

(b) The development and availability of property tax informational pamphlets and other written materials that explain, in simple and nontechnical language, all of the following matters:

(1) Taxation of real and personal property in California.

(2) Property tax exemptions.

(3) Supplemental assessments.

(4) Escape assessments.

(5) Assessment procedures.

(6) Taxpayer obligations, responsibilities, and rights.

(7) Obligations, responsibilities, and rights of property tax authorities, including, but not limited to, the board and assessors.

(8) Property tax appeal procedures.

5906. (a) The advocate shall undertake, to the extent not duplicative of existing programs, periodic review of property tax statements and other property tax forms prescribed by the board to determine both of the following:

(1) Whether the forms and their instructions promote or discourage taxpayer compliance.

(2) Whether the forms or questions therein are necessary and germane to the assessment function.

(b) The advocate shall undertake the review of taxpayer complaints and identify areas of recurrent conflict between taxpayers and assessment officers. This review shall include, but not be limited to, all of the following:

(1) The adequacy and timeliness of board and assessor responses to taxpayers' written complaints and requests for information.

(2) The adequacy and timeliness of corrections of the assessment roll, cancellations of taxes, or issuances of refunds after taxpayers have provided legitimate and adequate information demonstrating the propriety of the corrections, cancellations, or refunds, including, but not limited to, the filing of documents required by law to claim these corrections, cancellations, or refunds.

(3) The timeliness, fairness, and accessibility of hearings and decisions by the board, county boards of equalization, or assessment appeals boards where taxpayers have filed timely applications for assessment appeal.

(4) The application of penalties and interest to property tax assessments or property tax bills where the penalty or interest is a direct result of the assessor's failure to request specified information or a particular method of reporting information, or where the penalty or interest is a direct result of the taxpayer's good faith reliance on written advice provided by the assessor or the board.

(c) Nothing in this section shall be construed to modify any other provision of law or the California Code of Regulations regarding

requirements or limitations with respect to the correction of the assessment roll, the cancellation of taxes, the issuance of refunds, or the imposition of penalties or interest.

(d) The board shall annually conduct a public hearing, soliciting the input of assessors, other local agency representatives, and taxpayers, to address the advocate's annual report pursuant to Section 5904, and to identify means to correct any problems identified in that report.

5907. No state or local officer or employees responsible for the appraisal or assessment of property shall be evaluated based solely upon the dollar value of assessments enrolled or property taxes collected. However, nothing in this section shall be construed to prevent an official or employee from being evaluated based upon the propriety and application of the methodology used in arriving at a value determination.

5908. Upon request of a county assessor or assessors, the advocate, in conjunction with any other programs of the board, shall assist assessors in their efforts to provide education and instruction to their staffs and local taxpayers for purposes of promoting taxpayer understanding and compliance with the property tax laws, and, to the extent feasible, statewide uniformity in the application of property tax laws.

5909. (a) County assessors may respond to a taxpayer's written request for a written ruling as to property tax consequences of an actual or planned particular transaction, or as to the property taxes liability of a specified property. For purposes of statewide uniformity, county assessors may consult with board staff prior to issuing a ruling under this subdivision. Any ruling issued under this subdivision shall notify the taxpayer that the ruling represents the county's current interpretation of applicable law and does not bind the county, except as provided in subdivision (b).

(b) Where a taxpayer's failure to timely report information or pay amounts of tax directly results from the taxpayer's reasonable reliance on the county assessor's written ruling under subdivision (a), the taxpayer shall be relieved of any penalties, or interest assessed or accrued, with respect to property taxes not timely paid as a direct result of the taxpayer's reasonable reliance. A taxpayer's failure to timely report property values or to make a timely payment of property taxes shall be considered to directly result from the taxpayer's reasonable reliance on a written ruling from the assessor under subdivision (a) only if all of the following conditions are met:

(1) The taxpayer has requested in writing that the assessor advise as to the property tax consequences of a particular transaction or as to the property taxes with respect to a particular property, and fully described all relevant facts and circumstances pertaining to that transaction or property.

(2) The assessor has responded in writing and specifically stated the property tax consequences of the transaction or the property taxes with respect to the property.

5910. The advocate shall, on or before January 1, 1994, make specific recommendations to the board with respect to standardizing interest rates applicable to escape assessments and refunds of property taxes, and statutes of limitations, so as to place property taxpayers on an equal basis with taxing authorities.

5911. It is the intent of the Legislature in enacting this part to ensure that:

(a) Taxpayers are provided fair and understandable explanations of their rights and duties with respect to property taxation, prompt resolution of legitimate questions and appeals regarding their property taxes, and prompt corrections when errors have occurred in property tax assessments.

(b) The board designate a taxpayer's advocate position independent of, but not duplicative of, the board's existing property tax programs, to be specifically responsible for reviewing property tax matters from the viewpoint of the taxpayer, and to review and report on, and to recommend to the board's executive officer any necessary changes with respect to, property tax matters as described in this part.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 388

An act to amend Section 17751 of, and to add Section 17709 to, the Education Code, relating to school construction.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 17709 is added to the Education Code, to read:

17709. (a) The county superintendent of schools or county office of education shall be eligible to receive any funds from the portion of the proceeds of the sale of any state bonds that are set aside for the construction, reconstruction, or modernization of, or deferred

maintenance on facilities to house special education pupils who are defined as severely handicapped and eligible pursuant to Section 17747.

(b) Subdivision (a) is only applicable if the county superintendent of schools or county office of education has filed with the State Allocation Board a regionalized facility plan, as developed and approved by the State Department of Education, that covers the county or special education local planning agency area of responsibility.

SEC. 2. Section 17751 of the Education Code is amended to read:

17751. (a) A district may enter into an agreement with another governmental entity that includes some or all of the territory of the district for the purpose of the joint use of park and recreation facilities, including an auditorium, or commercial or industrial facilities.

(b) If the board receives an application for a project that includes some or all of the territory of the district for the purpose of the joint use of park and recreation facilities or commercial or industrial facilities, the board shall evaluate the application disregarding any space in the proposed joint-use facility that is beyond the needs of the district if the application contains a copy of the agreement specified in subdivision (a) and if the contract contains at least the following:

(1) An agreement that the county or other appropriate entity shall deposit in the county school lease-purchase fund, created pursuant to Section 17734, an amount equal to the total cost of any space in the proposed joint-use facility that is beyond the needs of the district, prior to the signing of the construction contract for the project. The deposit shall not be refundable, except to the extent that it may prove subsequently to be in excess of the actual total cost of the space that is beyond the needs of the district.

(2) An agreement between the district and the county or other appropriate entity regarding staffing, maintenance, materials acquisition, and other matters related to the administration and operating costs of the joint-use facility.

(3) An agreement between the district and the county or other appropriate entity regarding the procedure for amendment or termination of the contract, including the disposition of materials housed in the joint-use facility should termination of the contract occur.

(c) Any space in a joint-use facility that is beyond the needs of the district shall not be included by the board in any calculations made for any other purposes provided for in this article for the period of time that the contract for that joint-use facility remains in effect. If the contract is terminated, the board shall include the additional space in any calculations made after the termination for any other purposes provided for in this article.

CHAPTER 389

An act to amend Section 27491.25 of the Government Code, relating to coroners.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 27491.25 of the Government Code is amended to read:

27491.25. The coroner, or the coroner's appointed deputy, on being notified of a death occurring while the deceased was driving or riding in a motor vehicle, or as a result of the deceased being struck by a motor vehicle, shall take blood and urine samples from the body of the deceased before it has been prepared for burial and make appropriate related chemical tests to determine the alcoholic contents, if any, of the body. The coroner may perform other chemical tests including, but not limited to, barbituric acid and amphetamine derivative as deemed appropriate.

The detailed medical findings, resulting from those examinations that are conducted, shall either be reduced to writing or permanently preserved on recording discs or other similar recording media and shall include all positive and negative findings pertinent to the presence or absence of any alcoholic or other substance content.

This section shall not apply to the testing of deceased persons under the age of 15 years, unless the surrounding circumstances indicate the possibility of alcoholic, barbituric acid, and amphetamine derivative consumption, nor shall it apply when the death has occurred more than 24 hours after the accident.

CHAPTER 390

An act to amend Section 803 of the Penal Code, relating to crimes.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 803 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(10) A violation of Section 529a.

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

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

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

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

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

(2) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within

the limitation period specified for that crime in either Section 800 or 801.

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

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

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

CHAPTER 391

An act to amend Section 84206 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 84206 of the Government Code is amended to read:

84206. (a) The commission shall provide by regulation for a short form for filing reports required by this article for candidates or officeholders who receive contributions of less than one thousand dollars ($1,000), and who make expenditures of less than one thousand dollars ($1,000), in a calendar year.

(b) For the purposes of this section, in calculating whether one thousand dollars ($1,000) in expenditures have been made, payments for a filing fee or for a statement of qualification shall not be included if these payments have been made from the candidate's personal funds.

(c) Every candidate or officeholder who has filed a short form pursuant to subdivision (a), and who thereafter receives contributions or makes expenditures totaling one thousand dollars ($1,000) or more in a calendar year, shall send written notification to the Secretary of State, the local filing officer, and each candidate contending for the same office within 48 hours of receiving or expending a total of one thousand dollars ($1,000). The written

notification shall revoke the previously filed short form statement.

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

SEC. 3. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 392

An act to amend Sections 5101.4 and 5101.6 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 7, 1983. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 5101.4 of the Vehicle Code is amended to read:

5101.4. (a) Any person otherwise eligible under this article who is a recipient of the Army Medal of Honor, Navy Medal of Honor, Air Force Medal of Honor, Army Distinguished Service Cross, Navy Cross, or Air Force Cross may apply for special license plates for the vehicle under this article.

(b) The applicant shall, by conclusive evidence, show that the applicant is a recipient of the nation's highest decoration for valor, as specified in subdivision (a).

(c) The special license plates issued under this section shall contain the words "Legion of Valor" and shall run in a regular numerical series. An adhesive sticker denoting which of the nation's highest decorations for valor, as specified in subdivision (a), held by the applicant shall be affixed in a recess provided for it on the license plates.

(d) (1) A fee of thirty-five dollars ($35) shall be charged for the initial issuance of the special license plates. These license plates shall be permanent and shall not be required to be replaced.

(2) If the license plates become damaged or unserviceable, replacement of the license plates may be obtained from the department upon proper application and payment of a fee of

thirty-five dollars ($35).

(3) A vehicle bearing special license plates issued under this section is subject to the same annual registration fees as are other vehicles.

(4) The fee for the replacement of an adhesive sticker which has become damaged or unserviceable is seven dollars ($7).

(5) A fee of fifteen dollars ($15) shall be charged for the transfer of the license plates to another vehicle qualifying as a vehicle owned by the holder of the nation's highest decoration for valor, as specified in subdivision (a).

(e) Upon the death of a person issued special license plates pursuant to this section, his or her surviving spouse may retain the special license plates subject to the conditions set forth in this section. Upon the death of the spouse , the retained, special license plates shall be returned to the department either (1) within 60 days following that death or (2) upon the expiration of the vehicle registration, whichever occurs first.

SEC. 2. Section 5101.6 of the Vehicle Code is amended to read:

5101.6. (a) Any person otherwise eligible under this article who is a Congressional Medal of Honor recipient may apply for special license plates for the vehicle under this article. The special license plates assigned to the vehicle shall run in a separate numerical series and shall have inscribed on the license plate the words "Congressional Medal of Honor" or "Medal of Honor." The department shall reserve and issue the special license plates to all applicants providing the proof required by subdivision (b).

(b) The applicant shall, by satisfactory proof, show that the applicant is a Congressional Medal of Honor recipient.

(c) Special license plates may be issued pursuant to subdivision (a) only for a vehicle owned or co-owned by a Congressional Medal of Honor recipient.

(d) Upon the death of a person issued special license plates pursuant to this section, his or her surviving spouse may retain the special license plates subject to the conditions set forth in this section. Upon the death of the spouse , the retained, special license plates shall be returned to the department either (1) within 60 days following that death or (2) upon the expiration of the vehicle registration, whichever occurs first.

(e) Any vehicle exempted from fees by Section 9105 and by Section 10783 of the Revenue and Taxation Code shall lose the exemption upon the death of the Congressional Medal of Honor recipient.

(f) Sections 5106 and 5108 do not apply to this section.

CHAPTER 393

An act to add and repeal Chapter 14.5 (commencing with Section 8698) of Division 3 of the Business and Professions Code, relating to pests.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Chapter 14.5 (commencing with Section 8698) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 14.5. STRUCTURAL FUMIGATION ENFORCEMENT PROGRAM

8698. The Director of the Department of Pesticide Regulation shall be designated by the board as its agent for the purposes of carrying out Section 8698.1. The director shall contract with the Los Angeles County Agricultural Commissioner to perform increased structural fumigation inspection and enforcement activities as a pilot project. These activities shall be funded by the moneys collected pursuant to this chapter.

8698.1. (a) Any person who performs a structural fumigation in Los Angeles County shall pay to the Director of the Department of Pesticide Regulation a fee of five dollars ($5) for each treatment conducted at a specific building or structure.

(b) The fees shall be submitted to the director by the 10th day of the month following the month in which the treatment was performed. The fees shall be accompanied by a copy of a monthly pesticide use report showing the addresses, including the department number if applicable, of all structural fumigations. The report shall be in a form required by the director, identify the name and address of the person or company performing the fumigation, and include any other information requested by the director.

8698.2. The Director of the Department of Pesticide Regulation may adopt regulations to carry out the provisions of this chapter. In adopting regulations the director shall, in consultation with the Structural Pest Control Board, review recommendations from any individual, including any licensed pest control operator regarding matters which pertain to the use of structural fumigation to control pests. The director shall respond within a reasonable period of time to recommendations which the director deems are practicable and in the interest of the structural pest control industry and the public. The response of the director shall be in writing and shall contain statements regarding reasons for acceptance or rejection of a recommendation.

8698.3. (a) The Director of the Department of Pesticide

Regulation may levy a civil penalty against a person violating this chapter, including any regulation adopted pursuant to this chapter.

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

(c) Review of the decision of the director may be sought by the person against whom the penalty was levied, within 30 days of receiving notice of the decision, pursuant to Section 1094.5 of the Code of Civil Procedure.

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

8698.5. Any funds collected pursuant to this chapter shall be paid into the Department of Pesticide Regulation Fund and used for the sole purposes of funding enforcement activities directly related to the structural fumigation pilot project created pursuant to Section 8698. No more than 5 percent of the total amount of funds collected may be deducted for state or county administrative expenses, which shall be directly related to the administration of this chapter.

8698.6. This chapter shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1996, deletes or extends that date.

CHAPTER 394

An act to amend Section 326.5 of the Penal Code, relating to bingo.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 326.5 of the Penal Code is amended to read:

326.5. (a) Neither this chapter nor Chapter 10 (commencing with Section 330) applies to any bingo game which is conducted in a city, county, or city and county pursuant to an ordinance enacted under Section 19 of Article IV of the State Constitution, provided that the ordinance allows games to be conducted only by organizations

exempted from the payment of the bank and corporation tax by Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, and 23701*l* of the Revenue and Taxation Code and by mobilehome park associations and senior citizens organizations; and provided that the receipts of those games are used only for charitable purposes.

(b) It is a misdemeanor for any person to receive or pay a profit, wage, or salary from any bingo game authorized by Section 19 of Article IV of the State Constitution. Security personnel employed by the organization conducting the bingo game may be paid from the revenues of bingo games, as provided in subdivisions (j) and (k).

(c) A violation of subdivision (b) shall be punishable by a fine not to exceed ten thousand dollars ($10,000), which fine shall be deposited in the general fund of the city, county, or city and county which enacted the ordinance authorizing the bingo game. A violation of any provision of this section, other than subdivision (b), is a misdemeanor.

(d) The city, county, or city and county which enacted the ordinance authorizing the bingo game may bring an action to enjoin a violation of this section.

(e) No minors shall be allowed to participate in any bingo game.

(f) An organization authorized to conduct bingo games pursuant to subdivision (a) shall conduct a bingo game only on property owned or leased by it, or property whose use is donated to the organization, and which property is used by that organization for an office or for performance of the purposes for which the organization is organized. Nothing in this subdivision shall be construed to require that the property owned or leased by, or whose use is donated to, the organization be used or leased exclusively by, or donated exclusively to, that organization.

(g) All bingo games shall be open to the public, not just to the members of the authorized organization.

(h) A bingo game shall be operated and staffed only by members of the authorized organization which organized it. Those members shall not receive a profit, wage, or salary from any bingo game. Only the organization authorized to conduct a bingo game shall operate such a game, or participate in the promotion, supervision, or any other phase of such a game. This subdivision does not preclude the employment of security personnel who are not members of the authorized organization at such a bingo game by the organization conducting the game.

(i) No individual, corporation, partnership, or other legal entity, except the organization authorized to conduct a bingo game, shall hold a financial interest in the conduct of such a bingo game.

(j) With respect to organizations exempt from payment of the bank and corporation tax by Section 23701d of the Revenue and Taxation Code, all profits derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Those profits shall be used only for charitable purposes.

(k) With respect to other organizations authorized to conduct bingo games pursuant to this section, all proceeds derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Proceeds are the receipts of bingo games conducted by organizations not within subdivision (j). Those proceeds shall be used only for charitable purposes, except as follows:

(1) The proceeds may be used for prizes.

(2) A portion of the proceeds, not to exceed 20 percent of the proceeds before the deduction for prizes, or two thousand dollars ($2,000) per month, whichever is less, may be used for the rental of property and for overhead, including the purchase of bingo equipment, administrative expenses, security equipment, and security personnel.

(3) The proceeds may be used to pay license fees.

(4) A city, county, or city and county which enacts an ordinance permitting bingo games may specify in the ordinance that if the monthly gross receipts from bingo games of an organization within this subdivision exceed five thousand dollars ($5,000), a minimum percentage of the proceeds shall be used only for charitable purposes not relating to the conducting of bingo games and that the balance shall be used for prizes, rental of property, overhead, administrative expenses, and payment of license fees. The amount of proceeds used for rental of property, overhead, and administrative expenses is subject to the limitations specified in paragraph (2).

(*l*) (1) A city, county, or city and county may impose a license fee on each organization which it authorizes to conduct bingo games. The fee, whether for the initial license or renewal, shall not exceed fifty dollars ($50) annually, except as provided in paragraph (2). If an application for a license is denied, one-half of any license fee paid shall be refunded to the organization.

(2) In lieu of the license fee permitted under paragraph (1), a city, county, or city and county may impose a license fee of fifty dollars ($50) paid upon application. If an application for a license is denied, one-half of the application fee shall be refunded to the organization. An additional fee of one percent of the monthly gross receipts over five thousand dollars ($5,000) derived from bingo games shall be collected monthly by the city, county, or city and county issuing the license.

(m) No person shall be allowed to participate in a bingo game, unless the person is physically present at the time and place in which the bingo game is being conducted.

(n) The total value of prizes awarded during the conduct of any bingo games shall not exceed two hundred fifty dollars ($250) in cash or kind, or both, for each separate game which is held.

(o) As used in this section, "bingo" means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card that conform to numbers or symbols selected at random. Notwithstanding Section 330c, as used in this section, the

game of bingo shall include cards having numbers or symbols that are concealed and preprinted in a manner providing for distribution of prizes. The winning cards shall not be known prior to the game by any person participating in the playing or operation of the bingo game. All preprinted cards shall bear the legend, "for sale or use only in a bingo game authorized under California law and pursuant to local ordinance." It is the intention of the Legislature that bingo as defined in this subdivision applies exclusively to this section and shall not be applied in the construction or enforcement of any other provision of law.

CHAPTER 395

An act to amend Sections 61600, 61601.10, 61621.8, and 61765 of, and to add Section 61601.30 to, the Government Code, relating to community services districts.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 61600 of the Government Code is amended to read:

61600. A district formed under this law may exercise the powers granted for any of the following purposes designated in the petition for formation of the district and for any other of the following purposes that the district shall adopt:

(a) To supply the inhabitants of the district with water for domestic use, irrigation, sanitation, industrial use, fire protection, and recreation.

(b) The collection, treatment, or disposal of sewage, waste, and storm water of the district and its inhabitants.

(c) The collection or disposal of garbage or refuse matter.

(d) Protection against fire.

(e) Public recreation including, but not limited to, aquatic parks and recreational harbors, equestrian trails, playgrounds, golf courses, swimming pools, or recreational buildings.

(f) Street lighting.

(g) Mosquito abatement.

(h) The equipment and maintenance of a police department, other police protection, or other security services to protect and safeguard life and property.

(i) To acquire sites for, construct, and maintain library buildings, and to cooperate with other governmental agencies for library service.

(j) The opening, widening, extending, straightening, surfacing, and maintaining, in whole or in part, of any street in the district,

subject to the consent of the governing body of the county or city in which the improvement is to be made.

(k) The construction and improvement of bridges, culverts, curbs, gutters, drains, and works incidental to the purposes specified in subdivision (j), subject to the consent of the governing body of the county or city in which the improvement is to be made.

(*l*) The conversion of existing overhead electric and communication facilities to underground locations, which facilities are owned and operated by either a "public agency" or a "public utility," as defined in Section 5896.2 of the Streets and Highways Code, and to take proceedings for and to finance the cost of the conversion in accordance with Chapter 28 (commencing with Section 5896.1) of Part 3 of Division 7 of the Streets and Highways Code, subject to the consent of the public agency or public utility responsible for the owning, operation, and maintenance of the facilities. Nothing in this section gives a district formed under this law the power to install, own, or operate the facilities that are described in this subdivision.

(m) To contract for ambulance service to serve the residents of the district as convenience requires, if a majority of the voters in the district, voting in an election thereon, approve.

(n) To provide and maintain public airports and landing places for aerial traffic.

(o) To provide transportation services.

(p) To abate graffiti.

SEC. 2. Section 61601.10 of the Government Code is amended to read:

61601.10. (a) Notwithstanding the provisions of Section 61600, whenever the board of directors of a district listed in subdivision (b) determines by resolution that it is feasible, economically sound, and in the public interest, and if a majority of the voters voting on the proposition vote in favor of the additional purpose pursuant to Section 61601, the district may enforce the covenants, conditions, and restrictions adopted for each tract within the district and assume the duties of the architectural control committee for each tract within the district for the purposes of maintaining uniform standards of development within each tract as adopted in the covenants, conditions, and restrictions. The district shall exercise the duties of an architectural control committee for any tract only to the extent that an architectural control committee is authorized by the covenants, conditions, and restrictions that apply to the tract. For the purposes of this subdivision, "tract" means any parcel of land for which the county or the city has authorized development. The district may divest itself of the power in the same manner as the power was acquired.

(b) This section shall apply only to the following districts:

(1) Bel Marin Keys Community Services District.

(2) Big River Community Services District.

(3) Brooktrails Community Services District.

(4) Cameron Estates Community Services District.
(5) Cameron Park Community Services District.
(6) El Dorado Hills Community Services District.
(7) Golden West Community Services District.
(8) Lake Shastina Community Services District.
(9) Rancho Murieta Community Services District.
(10) Salton Community Services District.
(11) Sea Oasis Community Services District.
(12) Stallion Springs Community Services District.
(13) Tenaja Community Services District.
(14) Springfield Meadows Community Services District.
(15) Wallace Community Services District.

SEC. 3. Section 61601.30 is added to the Government Code, to read:

61601.30. (a) Notwithstanding the provisions of Sections 61600 and 61601 and subject to subdivisions (b), (c), and (d), whenever the Board of Directors of the Wallace Community Services District determines by resolution that it is feasible, economically sound, and in the public interest for the district to exercise its power for the purpose of maintaining, controlling, or operating works or facilities within the district for supplying the district and its inhabitants with liquefied petroleum gas, the board shall adopt the additional purpose by resolution entered in the minutes and that power of the district may be exercised thereafter. The board may thereafter divest the district of the power to carry on those activities in the same manner as it may acquire that power.

(b) Except as provided in subdivision (c), regarding any privately owned works or facilities, the district shall not maintain, control, or operate any of the works or facilities for the storage, transmission, and delivery of the liquefied petroleum gas, except by either (1) mutual agreement between the district or the district's predecessor in interest and the owner of the works or facilities, or (2) by order of a court of competent jurisdiction based upon a failure of the owner of the works or facilities to perform its obligations under a mutual agreement between the district or the district's predecessor in interest and the owner of the works or facilities; provided, however, that the authority provided by this subdivision shall only be exercised where it is necessary to ensure the continued provision of liquefied petroleum gas to the residents of Wallace Lake Estates.

(c) Notwithstanding the provisions of Sections 61600 and 61601, the Wallace Community Services District shall have the authority to acquire, own, maintain, control, or operate the underground gas distribution pipeline system located and to be located within Wallace Lake Estates for the purpose of allowing a privately owned provider of liquefied petroleum gas to use the underground gas distribution pipeline system pursuant to a mutual agreement between the private provider of liquefied petroleum gas and the district or the district's predecessor in interest. The district shall require and receive payment from the private provider of liquefied petroleum

gas for the use of the works or facilities, including the underground gas distribution pipeline system.

(d) The authority granted by this section shall expire when the Pacific Gas and Electric Company is ready, willing, and able to provide natural gas service to the residents of Wallace Lake Estates, and at that time, the district shall diligently transfer any and all of its title, ownership, maintenance, control, and operation of the underground gas distribution pipeline system to the Pacific Gas and Electric Company.

SEC. 4. Section 61621.8 of the Government Code is amended to read:

61621.8. (a) This section shall apply only to the Bell Canyon Community Services District, the Wallace Community Services District, and the Lake Sherwood Community Services District, and subdivisions (b) and (d) to the Cameron Estates Community Services District.

(b) Notwithstanding any other provision of law, in the case of roads which a district owns and which are not formally dedicated to or kept open for use by the public for the purpose of vehicular travel, the district may by ordinance adopt regulations which limit access to and the use of those roads to landowners and residents of the district.

(c) Notwithstanding any other provision of law, a district, other than the Cameron Estates Community Services District, may by ordinance adopt regulations that limit access to or the use of its park and recreational facilities and property to landowners and residents of the district.

(d) The Cameron Estates Community Services District may accept special district augmentation funds from the county but may not expend them for construction, maintenance, or improvement of roads on which the district has limited access to landowners and residents of the district.

(e) Violation of any regulation adopted pursuant to this section is a misdemeanor.

SEC. 5. Section 61765 of the Government Code is amended to read:

61765. A district may fix, on or before the first day of August in each calendar year, a water or sewer standby or availability charge for either water or sewers not to exceed ten dollars ($10) per year for each acre of land, or ten dollars ($10) per year for each parcel of land of less than an acre within the district to which water or sewers are made available for any purpose by the district, whether the water or sewers are actually used or not. The board of directors of a district which fixes the charge may establish schedules varying the charges depending upon factors such as the uses to which the land is put, the cost of transporting the water to the land, the cost of transporting the sewage from the land, the amount of water used by the land, and the amount of sewage discharged from the land. The board may restrict charges to lands lying within one or more improvement districts or zones within the community service district.

SEC. 6. The Legislature finds and declares as follows:

(a) The subdivision known as Wallace Lake Estates is located entirely within the boundaries of Wallace Community Services District.

(b) An underground gas distribution pipeline system has been installed within the private streets located within Unit 1 of Wallace Lake Estates and will be installed within Units 2 and 3 of Wallace Lake Estates upon development of those units.

(c) The purpose of the underground gas distribution pipeline system is to provide the means for transmitting and delivering liquefied petroleum gas to the residents of Wallace Lake Estates until the Pacific Gas and Electric Company is ready, willing, and able to provide natural gas service to the residents of Wallace Lake Estates through the underground gas distribution pipeline system.

(d) Public policy would be served by allowing the Wallace Community Services District to own the underground gas distribution pipeline system; provided, however, that the authority shall expire when the Pacific Gas and Electric Company is ready, willing, and able to provide natural gas service to the residents of Wallace Lake Estates.

(e) Public policy would also be served by allowing the Wallace Community Services District, in limited circumstances, to temporarily maintain, control, or operate the works or facilities of a privately owned liquefied petroleum gas provider for the purpose of storage, transmission, and delivery of liquefied petroleum gas to the residents of Wallace Lake Estates when necessary to ensure the continued provision of that service to those residents; provided, however, that the limited authority shall expire when the Pacific Gas and Electric Company is ready, willing, and able to provide natural gas service to the residents of Wallace Lake Estates.

SEC. 7. Nothing in this act is intended to provide the Wallace Community Services District with the power to be a provider of gas service except in the limited circumstances specifically provided by this act.

SEC. 8. The Legislature finds and declares that a special act is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of unique circumstances applicable to the Wallace Community Services District. These circumstances are that until a private supplier is ready to provide natural gas service to the residents of Wallace Lake Estates, the Wallace Community Services District would be best able to provide that service using the present and planned parts of a gas distribution pipeline system, and the district therefore needs the authority conferred by this act.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty

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

CHAPTER 396

An act to amend Section 31461 of, and to add Sections 31458.3 and 31461.1 to, the Government Code, relating to the County Employees Retirement Law of 1937.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. The Legislature hereby finds and declares that the Legislature, in enacting this act, does not intend in any manner to affect Chapter 45 of the Statutes of 1992.

SEC. 2. Section 31458.3 is added to the Government Code, to read:

31458.3. A member's ex-spouse who is receiving payments from the system pursuant to an order of the court dividing the community property interest in the member's retirement allowance may designate one or more beneficiaries who shall receive those payments following the death of the ex-spouse. Those payments shall terminate upon the death of the member.

This section applies only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

SEC. 3. Section 31461 of the Government Code is amended to read:

31461. (a) "Compensation earnable" by a member means the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. The computation for any absence shall be based on the compensation of the position held by the member at the beginning of the absence.

(b) In a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961, in addition to subdivision (a), compensation that has been deferred shall be deemed "compensation earnable" when earned, rather than when paid.

SEC. 4. Section 31461.1 is added to the Government Code, to read:

31461.1. (a) This section applies only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

(b) Notwithstanding Sections 31460 and Section 31461, neither "compensation" nor "compensation earnable" shall include any of the following: cafeteria or flexible benefit plan contributions, transportation allowances, car allowances, or security allowances, as enumerated in a resolution adopted pursuant to subdivision (c).

(c) This section shall not be operative until the board of supervisors, by resolution adopted by a majority vote, makes this section operative with respect to any employee who becomes a member after the effective date of the resolution.

(d) Nothing in this section shall be construed to affect any determination made by the board of retirement, pursuant to Section 31461, prior to the effective date of this section.

(e) Nothing in this section shall be construed to affect the validity of any memorandum of understanding or similar agreement that has been executed prior to the effective date of this section.

SEC. 5. The Legislature declares that this act was enacted in response to a local request within the meaning of subdivision (a) of Section 6 of Article XIII B of the California Constitution. Therefore, even if the Commission on State Mandates or any other entity determines that this bill imposes a state-mandated local program, no reimbursement is required under Section 6 of Article XIII B.

CHAPTER 397

An act to amend Section 4047.5 of the Business and Professions Code, relating to pharmacy.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 4047.5 of the Business and Professions Code is amended to read:

4047.5. A pharmacist shall not dispense any prescription except in a container correctly labeled with the following:

(a) Except where the prescriber orders otherwise, either the manufacturer's trade name of the drug or the generic name and the name of the manufacturer. Commonly used abbreviations may be used. Preparations containing two or more active ingredients may be identified by the manufacturer's trade name or the commonly used name or the principal active ingredients.

(b) The directions for the use of the drug.

(c) The name of the patient(s).

(d) The name of the prescriber.

(e) The date of issue.

(f) The name and address of the furnisher, and prescription number or other means of identifying the prescription.

(g) The strength of the drug or drugs dispensed.

(h) The quantity of the drug or drugs dispensed.

(i) The expiration date of the effectiveness of the drug dispensed if this information is required on the original label of the manufacturer of the drug.

(j) The condition for which the drug was prescribed if requested by the patient and the condition is indicated on the prescription.

If a pharmacist dispenses a prescribed drug by means of a unit dose medication system, as defined by administrative regulation, for a patient in a skilled nursing, intermediate care or other health care facility, the requirements of this section will be satisfied if the unit dose medication system contains the aforementioned information or the information is otherwise readily available at the time of drug administration.

SEC. 2. Section 4036 of the Business and Professions Code is amended to read:

4036. (a) "Prescription" means an oral order given individually for the person or persons for whom prescribed, directly from the prescriber to the furnisher, or indirectly by means of a written order, signed by the prescriber, and shall bear the name or names and address of the patient or patients, the name and quantity of the drug or device prescribed, directions for use, the date of issue, a rubber stamped, typed, printed by hand or typeset name, address, and telephone number of the prescriber, his or her license classification, and his or her federal registry number, if a controlled substance is prescribed, and a legible, clear notice of the condition for which the drug is being prescribed, if requested by the patient or patients. No person other than a physician, dentist, podiatrist, or veterinarian, shall prescribe or write a prescription.

Nothing in the amendments made to this section at the 1969 Regular Session of the Legislature shall be construed as expanding or limiting the right which a chiropractor, while acting within the scope of his or her license, may have to prescribe a device.

The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(b) Notwithstanding subdivision (a), a written order of the prescriber for a dangerous drug, except for any Schedule II controlled substance, which contains at least the name and signature of the prescriber, the name or names and address of the patient or patients in a manner consistent with paragraph (3) of subdivision (b) of Section 11164 of the Health and Safety Code, the name and quantity of the drug prescribed, directions for use, and the date of issue may be treated as a prescription by the dispensing pharmacist so long as any additional information required by subdivision (a) is readily retrievable in the pharmacy. In the event of a conflict

between the provisions of this subdivision and Section 11164 of the Health and Safety Code, the provisions of Section 11164 shall prevail.

(c) Except as provided in Section 4036.1, an oral prescription shall as soon as practicable be reduced to writing by the pharmacist and shall be filled by, or under the direction of, the pharmacist. The pharmacist need not reduce to writing the address, telephone number, license classification, federal registry number of the prescriber, or the address of the patient or patients if the information is readily retrievable in the pharmacy.

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

CHAPTER 398

An act to amend Sections 15071 and 15071.1 of the Health and Safety Code, relating to health facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 15071 of the Health and Safety Code, as amended by Section 2 of Chapter 1051 of the States of 1990, is amended to read:

15071. Construction or alterations of buildings specified in paragraphs (2) and (3) of subdivision (b) of Section 15026 shall conform to the provisions of the latest edition of the California Building Standards Code. The statewide office shall independently review and inspect these buildings. For purposes of this section, "construction or alteration" includes the conversion of a building to a purpose specified in paragraphs (2) and (3) of subdivision (b) of Section 15026. Any construction or alteration of any building subject to this section shall be exempt from any plan review and approval or construction inspection requirement of any city, county, or city and county.

The statewide office may also exempt from the plan review process or expedite those projects undertaken by an applicant for a hospital building which the statewide office determines do not

materially alter the mechanical, electrical, architectural, or structural integrity of the facility. The statewide office shall set forth criteria to expedite projects or to implement any exemptions made pursuant to this paragraph.

The Legislature recognizes the relative safety of single story, wood frame, and light steel frame construction for use in housing patients requiring skilled nursing and intermediate care services and it is, therefore, the intent of the Legislature to provide for reasonable flexibility in seismic safety standards for these structures. The statewide office shall be reasonably flexible in the application of seismic standards for other buildings by allowing incidental and minor nonstructural additions or nonstructural alterations to be accomplished with simplified written approval procedures as established by the statewide office, with the advice of the office of the State Architect and the State Fire Marshal.

The statewide office shall continue to implement, and modify as necessary, criteria which was initially developed and implemented prior to July 2, 1989, to exempt from the plan review process or expedite those projects for alterations of buildings specified in paragraphs (2) and (3) of subdivision (b) of Section 15026 which may include, but are not limited to, renovations, remodeling, or installations of necessary equipment such as hot water heaters, air-conditioning units, dishwashers, laundry equipment, handrails, lights, television brackets, small emergency generators (up to 25 kilowatts), storage shelves, and similar plant operations equipment; and decorative materials such as wall coverings, floor coverings, and paint.

The statewide office shall include provisions for onsite field approvals by available office construction advisers and the preapproval of projects which comply with the requirements for which the office has developed standard architectural or engineering detail, or both standard architectural and engineering detail.

This section shall remain in effect only until January 1, 1997, and shall have no force or effect on or after that date, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 2. Section 15071 of the Health and Safety Code, as added by Section 3 of Chapter 1051 of the Statutes of 1990, is amended to read:

15071. Construction or alterations of buildings specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 15026 shall conform to the applicable provisions of the latest edition of the California Building Standards Code. The statewide office shall independently review and inspect these buildings. For purposes of this section, "construction or alteration" includes the conversion of a building to a purpose specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 15026. Any construction or alteration of any building subject to this section shall be exempt from any plan review and approval or construction inspection requirement of any

city, county, or city and county. The building standards for the construction or alteration of buildings specified in paragraph (1) of subdivision (b) of Section 15026 shall not be more restrictive or comprehensive than comparable building standards established, or otherwise applied, by the statewide office to clinics licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

The statewide office may also exempt from the plan review process or expedite those projects undertaken by an applicant for a hospital building which the statewide office determines do not materially alter the mechanical, electrical, architectural, or structural integrity of the facility. The statewide office shall set forth criteria to expedite projects or to implement any exemptions made pursuant to this paragraph.

The Legislature recognizes the relative safety of single story, wood frame, and light steel frame construction for use in housing patients requiring skilled nursing and intermediate care services and it is, therefore, the intent of the Legislature to provide for reasonable flexibility in seismic safety standards for these structures. The statewide office shall be reasonably flexible in the application of seismic standards for other buildings by allowing incidental and minor nonstructural additions or nonstructural alterations to be accomplished with simplified written approval procedures as established by the statewide office, with the advice of the office of the State Architect and the State Fire Marshal.

The statewide office shall continue to implement, and modify as necessary, criteria which was initially developed and implemented prior to July 2, 1989, to exempt from the plan review process or expedite those projects for alterations of buildings specified in paragraphs (2) and (3) of subdivision (b) of Section 15026 which may include, but are not limited to, renovations, remodeling, or installations of necessary equipment such as hot water heaters, air-conditioning units, dishwashers, laundry equipment, handrails, lights, television brackets, small emergency generators (up to 25 kilowatts), storage shelves, and similar plant operations equipment; and decorative materials such as wall coverings, floor coverings, and paint.

The statewide office shall include provisions for onsite field approvals by available office construction advisers and the preapproval of projects which comply with the requirements for which the office has developed standard architectural or engineering detail, or both standard architectural and engineering detail.

This section shall become operative on January 1, 1997.

SEC. 3. Section 15071.1 of the Health and Safety Code is amended to read:

15071.1. A city, county, or city and county, as applicable, shall have plan review and building inspection responsibilities for the construction or alteration of buildings described in paragraph (1) of subdivision (b) of Section 15026. The building standards for the

construction or alteration of buildings specified in paragraph (1) of subdivision (b) of Section 15026 established or applied by a city, county, or city and county, shall not be more restrictive or comprehensive than comparable building standards established, or otherwise applied, to clinics licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

This section shall remain in effect only until January 1, 1997, and shall have no force or effect on or after that date, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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

In order to protect access to quality health care services to all Californians, it is necessary that this act take effect immediately.

CHAPTER 399

An act to amend Sections 14410, 15301, 22458.1 and 24458.1, of the Financial Code, relating to financial regulation.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 14410 of the Financial Code is amended to read:

14410. (a) No member of the board of directors, supervisory committee, or credit committee shall receive any compensation for his or her services as such, but he or she may be provided with reasonable health, accident and similar insurance under such terms and conditions as specified by the commissioner in the credit union regulations, provided that insurance protection shall exclude life insurance, shall be limited to areas of risk, including accidental death and dismemberment, to which the official is exposed by virtue of carrying out the duties or responsibilities of his or her credit union position and shall cease immediately when the insured person leaves office without providing residual benefits other than from pending

claims, if any.

(b) Notwithstanding subdivision (a), a director or committee member may be reimbursed for actual expenses incurred in the performance of his or her duties if reimbursement is made pursuant to the requirements of the commissioner's regulations controlling expense reimbursement by the credit union. Reimbursement for actual expenses may include, among other things, travel expenses incurred on or relating to credit union business, and any other matters, categories, or items of expense that the commissioner may establish by regulation.

(c) Nothing in this section shall prevent any person from receiving compensation for actual services as a general manager, credit manager, loan officer, or other position as an employee of the credit union.

SEC. 2. Section 15301 of the Financial Code is amended to read:

15301. Upon recommendation of the board of directors the members of any credit union may by an affirmative majority vote of such members resolve to convert such credit union into a federal credit union. For the purposes of this article, an "affirmative majority vote of such members" means that the vote by the members to convert the credit union into a federal credit union is approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum) or written ballot in conformity with Section 7513 of the Corporations Code or by the affirmative vote or written ballot as may be provided in the bylaws pursuant to subdivision (e) of Section 7151 of the Corporations Code.

SEC. 3. Section 22458.1 of the Financial Code is amended to read:

22458.1. (a) Credit insurance shall not be deemed to be a collateral sale, purchase, or agreement within the terms of Section 22004, 22456, or 22457 when the insurance is provided in accordance with the provisions of the Insurance Code and this section.

As used in this division:

(1) "Credit insurance" means credit life, disability, and loss-of-income insurance, or any combination of these coverages.

(2) "Credit life insurance" and "credit disability insurance" have the same meanings as defined in Section 779.2 of the Insurance Code.

(3) "Credit loss-of-income insurance" means insurance issued to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is involuntarily unemployed, as defined in the policy.

(b) A licensee may provide credit insurance with the borrower's consent, the form to be approved by the Insurance Commissioner, and a copy, together with evidence of its approval by the Insurance Commissioner, to be filed with the commissioner, and in an amount not in excess of the amount of the indebtedness, and, with respect to credit life or disability insurance, may collect from the borrower an amount not in excess of that permitted by subdivision (h).

(c) If the loan is prepaid in full by cash, a new loan, refinancing or otherwise (except by that insurance) before the final installment date, the borrower shall receive a rebate of that amount computed in accordance with the formula approved by the Insurance Commissioner pursuant to Section 779.14 of the Insurance Code.

(d) When charges for the loan are precomputed in accordance with Section 22480, any permitted deferment charge may be computed on the combined total of the precomputed charge and the credit insurance charge. Only one deferment charge may be collected in connection with any loan contract irrespective of the number of borrowers, and only one borrower need be insured. The amount of the deferment charge may be deducted from the principal of the loan.

(e) If life or disability insurance is provided, and if the insured borrower dies or becomes disabled during the term of the loan contract, the insurance shall be sufficient to pay the total amount due on the loan (excluding unearned charges) outstanding on the date of death, or all amounts which become due on the loan thereafter during the period of disability, as the case may be, without any exception, reservation, or limitation, subject, however, to the provisions of Section 22458.2.

(f) Any credit insurance provided shall be in force as soon as the loan is made. A licensee shall not require credit insurance as a condition of making a loan.

(g) If a borrower procures credit insurance by or through a licensee, the statement required by Section 22473 shall disclose the cost thereof to the borrower, and the licensee shall deliver or cause to be delivered to the borrower a copy of the policy, certificate, or other evidence thereof, within a reasonable time. In the event a licensee provides credit disability or loss-of-income insurance pursuant to this division, the licensee shall also deliver an understandable written statement to the borrower detailing the conditions when the borrower will be entitled to make a claim under the insurance policy and the procedure to be followed in making the claim. This statement shall be first approved by the Insurance Commissioner.

(h) The amount charged to the borrower for credit life or disability insurance shall not exceed in the case of credit life insurance fifty cents ($0.50) per year per one hundred dollars ($100) of indebtedness (and in the same proportion for longer or shorter maturities and larger or smaller amounts) or the amount established by or pursuant to Section 779.36 of the Insurance Code, whichever is less, or, in the case of credit disability insurance, the amount established by or pursuant to Section 779.36 of the Insurance Code.

(i) Nothing in this article shall prevent a licensee from selling insurance as other business when authorized pursuant to Section 22404.

This section does not apply to any loan of a bona fide principal amount of ten thousand dollars ($10,000) or more, or to any

commercial loan of a bona fide principal amount of five thousand dollars ($5,000) or more, or to any commercial loan made to a person engaged in the business of selling goods for the purpose of financing the purchase of goods for resale, or to a duly licensed personal property broker in connection with any such loan or loans as determined in accordance with Section 22054.

SEC. 4. Section 24458.1 of the Financial Code is amended to read:

24458.1. (a) Credit insurance shall not be deemed to be a collateral sale, purchase, or agreement within the terms of Section 24004, 24456, or 24457 when the insurance is provided in accordance with the provisions of the Insurance Code and this section.

As used in this division:

(1) "Credit insurance" means credit life, disability, and loss-of-income insurance, or any combination of these coverages.

(2) "Credit life insurance" and "credit disability insurance" have the same meanings as defined in Section 779.2 of the Insurance Code.

(3) "Credit loss-of-income insurance" means insurance issued to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is involuntarily unemployed, as defined in the policy.

(b) A licensee may provide credit insurance with the borrower's consent, the form to be approved by the Insurance Commissioner, and a copy, together with evidence of its approval by the Insurance Commissioner, to be filed with the commissioner, and in an amount not in excess of the amount of the indebtedness, and, with respect to credit life or disability insurance, may collect from the borrower an amount not in excess of that permitted by subdivision (h).

(c) If the loan is prepaid in full by cash, a new loan, refinancing or otherwise (except by that insurance) before the final installment date, the borrower shall receive a rebate of that amount computed in accordance with the formula approved by the Insurance Commissioner pursuant to Section 779.14 of the Insurance Code.

(d) When charges for the loan are precomputed in accordance with Section 24480, any permitted deferment charge may be computed on the combined total of the precomputed charge and the credit insurance charge. Only one deferment charge may be collected in connection with any loan contract irrespective of the number of borrowers, and only one borrower need be insured. The amount of the deferment charge may be deducted from the principal of the loan.

(e) If life or disability insurance is provided, and if the insured borrower dies or becomes disabled during the term of the loan contract, the insurance shall be sufficient to pay the total amount due on the loan (excluding unearned charges) outstanding on the date of death, or all amounts which become due on the loan thereafter during the period of disability, as the case may be, without any exception, reservation, or limitation, subject, however, to the provisions of Section 24458.2.

(f) Any credit insurance provided shall be in force as soon as the

loan is made. A licensee shall not require credit insurance as a condition of making a loan.

(g) If a borrower procures credit insurance by or through a licensee, the statement required by Section 24473 shall disclose the cost thereof to the borrower, and the licensee shall deliver or cause to be delivered to the borrower a copy of the policy, certificate, or other evidence thereof, within a reasonable time. In the event a licensee provides credit disability or loss-of-income insurance pursuant to this division, the licensee shall also deliver an understandable written statement to the borrower detailing the conditions when the borrower will be entitled to make a claim under the insurance policy and the procedure to be followed in making the claim. This statement shall be first approved by the Insurance Commissioner.

(h) The amount charged to the borrower for credit life or disability insurance shall not exceed in the case of credit life insurance fifty cents ($0.50) per year per one hundred dollars ($100) of indebtedness (and in the same proportion for longer or shorter maturities and larger or smaller amounts) or the amount established by or pursuant to Section 779.36 of the Insurance Code, whichever is less, or, in the case of credit disability insurance, the amount established by or pursuant to Section 779.36 of the Insurance Code.

(i) Nothing in this article shall prevent a licensee from selling insurance as other business when authorized pursuant to Section 24404.

This section does not apply to any loan of a bona fide principal amount of ten thousand dollars ($10,000) or more, or to a duly licensed consumer finance lender in connection with any such loan or loans as determined in accordance with Section 24054.

CHAPTER 400

An act to amend Section 25503.9 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 25503.9 of the Business and Professions Code is amended to read:

25503.9. Nothing in this division prohibits a winegrower from giving or selling, or giving and selling wine and a beer manufacturer from giving or selling, or giving and selling beer at prices other than those contained in schedules filed with the department to:

(a) A nonprofit charitable corporation or association exempt from payment of income taxes under the provisions of the Internal

Revenue Code of 1954 of the United States and Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code.

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

(c) A nonprofit corporation or association which is exempt from payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States and is defined as a tax exempt organization under Section 23701a, 23701d, 23701e, 23701f, or 23701r of the Revenue and Taxation Code. Wine or beer given or sold by a winegrower or beer manufacturer pursuant to this subdivision may be furnished only in connection with public service or fundraising activities including picnics, parades, fairs, amateur sporting events, agricultural exhibitions, or similar events.

CHAPTER 401

An act to amend Section 662.1 of the Insurance Code, relating to insurance.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 662.1 of the Insurance Code is amended to read:

662.1. Proof of mailing or delivery of a notice of cancellation to a lienholder or an additional interest on a policy to which this chapter applies shall be sufficient to terminate the interest of the parties provided the notice is mailed or delivered at least the maximum number of days prior to termination of the parties' interest as required by Section 662. For purposes of this section, "delivery" includes electronic transmittal or facsimile or personal delivery. No lienholder or additional interest shall require a more restrictive form of notice.

CHAPTER 402

An act to amend Sections 987.7, 1206, 13003, 13021, and 13071 of, and to add Sections 1088.6, 1111.5, and 13059 to, the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 987.7 of the Unemployment Insurance Code is amended to read:

987.7. (a) If the worker contributions required in any one month to be made because of the receipt of cash tips and cash gratuities exceed the wages of the worker under the control of the employer, the worker may furnish the employer, on or before the 10th day of the following month, or, if the amounts are estimated, on or before the last day of the month following the calendar quarter, an amount equal to the excess.

(b) If the worker contributions required by Section 984 with respect to cash tips and cash gratuities exceed the amount of worker contributions that can be collected by the employer from the wages of the worker, the excess shall be paid by the worker, except as provided by Section 1088.6. The worker shall pay the excess to the department within 30 days from his or her receipt of the written statement furnished by his or her employer pursuant to Section 1088.6. If the worker fails to pay the excess within the time required by this subdivision, the director may make an assessment for the excess and shall give the worker a written notice of the assessment. Article 8 (commencing with Section 1126) with respect to the assessment of contributions and Chapter 7 (commencing with Section 1701) with respect to the collection of contributions shall apply to the recovery of amounts under this subdivision.

(c) The director may offset amounts assessed pursuant to subdivision (b) against any refund payable to the worker under Section 1176.5 or against any amount of disability benefits to which he or she may become entitled under Part 2 (commencing with Section 2601) within any of the following periods:

(1) The current disability benefit period.

(2) One year from the beginning date of any disability benefit period that begins during the three-year period next succeeding the service of notice of the assessment.

SEC. 2. Section 1088.6 is added to the Unemployment Insurance Code, to read:

1088.6. Each employer, pursuant to authorized regulations, shall furnish a written statement to the worker showing the excess of the worker contributions required with respect to wages included in Section 927 and subdivision (n) of Section 13009 over the worker

contributions withheld pursuant to Sections 984 and 13020, and shall file a copy of this statement with the director. If the employer fails to furnish the statement, as required by this section and authorized regulations, he or she shall be liable for the excess of the worker contributions.

SEC. 3. Section 1111.5 is added to the Unemployment Insurance Code, to read:

1111.5. If the Governor declares a state of emergency, the director may extend the time requirements for filing returns and reports of wages pursuant to Section 1088 and the time requirement for payment of employer and worker contributions pursuant to Section 1110. The extension granted by the director pursuant to this section shall apply only to employers prevented by the conditions giving rise to the state of emergency from timely filing their returns and reports of wages or from timely payment of the taxes due.

SEC. 4. Section 1206 of the Unemployment Insurance Code is amended to read:

1206. A notice given under this chapter by the director, an administrative law judge, or the appeals board:

(a) May be served personally or by mail, except that service by mail given by the director shall be made by certified mail in the following cases:

(1) Under Sections 1137 and 1221.

(2) Under Sections 1131, 1142, 1184, 1733, and 1735 if the assessment is in excess of one thousand dollars ($1,000).

(3) Under Section 1180 if the denial of claim for refund or credit is in excess of one thousand dollars ($1,000).

(b) If served by mail, the notice shall be:

(1) Addressed to the employing unit or person at his or her address as it appears on the records of the department.

(2) Complete at the time of deposit in the United States mail.

(3) Made pursuant to Section 1013 of the Code of Civil Procedure, excepting service of notice of a hearing before or an order or a decision of an administrative law judge or of the appeals board in transfer of reserve account, reassessment and refund matters.

(c) May be served electronically or by a computerized service if service by certified mail is not required and the manner of service is agreed to by the recipient.

SEC. 5. Section 13003 of the Unemployment Insurance Code is amended to read:

13003. (a) Except where the context otherwise requires, the definitions set forth in this chapter, and in addition the definitions and provisions of the Personal Income Tax Law referred to and hereby incorporated by reference as set forth in the following provisions of the Revenue and Taxation Code, shall apply to and govern the construction of this division:

(1) "Corporation" as defined by Section 17009.

(2) "Fiduciary" as defined by Section 17006.

(3) "Fiscal year" as defined by Section 17011.

(4) "Foreign country" as defined by Section 17019.
(5) "Franchise Tax Board" as defined by Section 17003.
(6) "Husband" and "wife" as defined by Section 17021.
(7) "Individual" as defined by Section 17005.
(8) "Military or naval forces" as defined by Section 17022.
(9) "Nonresident" as defined by Section 17015.
(10) "Partnership" as defined by Section 17008.
(11) "Person" as defined by Section 17007.
(12) "Resident" as defined by Sections 17014 and 17016.
(13) "State" as defined by Section 17018.
(14) "Taxable year" as defined by Section 17010.
(15) "Taxpayer" as defined by Section 17004.
(16) "Trade or business" as defined by Section 17020.
(17) "United States" as defined by Section 17017.

(b) The provisions of Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, relating to the following items, are hereby incorporated by reference and shall apply to and govern construction of this division:

(1) Trade or business expense (Article 6 (commencing with Section 17201) of Chapter 3).

(2) Deductions for retirement savings (Article 6 (commencing with Section 17201) of Chapter 3).

(3) Deduction for moving expense (Article 6 (commencing with Section 17201) of Chapter 3).

(4) Distributions of property by a corporation to a shareholder (Chapter 4 (commencing with Section 17321)).

(5) Deferred compensation (Chapter 5 (commencing with Section 17501)).

(6) Partners and partnerships (Chapter 10 (commencing with Section 17851)).

(7) Gross income of nonresident taxpayers Chapter 11 (commencing with Section 17951)).

(8) Postponement of the time for certain acts by individuals in or in support of the armed forces (Article 2 (commencing with Section 18431) of Chapter 17).

(9) Disclosure of information (Article 2 (commencing with Section 19281) of Chapter 21, except Section 19289.5). For this purpose "Franchise Tax Board" as used therein shall mean the Employment Development Department in respect to information obtained in the administration of this division.

SEC. 6. Section 13021 of the Unemployment Insurance Code is amended to read:

13021. (a) Every employer required to withhold any tax under Section 13020 shall for each calendar quarter, whether or not wages or payments are paid in the quarter, file a withholding return in a form prescribed by the department, and pay over the taxes so required to be withheld. Except as provided in subdivisions (b) and (c) of this section, the employer shall file a withholding return and remit the total amount of income taxes withheld during the calendar

quarter on or before the last day of the month following the close of the calendar quarter.

(b) Whenever an employer is required, for federal income tax purposes, to remit the total amount of withheld federal income tax in accordance with Section 6302 of the Internal Revenue Code and regulations thereunder, and the accumulated amount of state income tax withheld is more than seventy-five dollars ($75), the employer shall remit the total amount of income tax withheld for state income tax purposes within the number of banking days as specified for withheld federal income taxes by Section 6302 of the Internal Revenue Code, and regulations thereunder.

(c) (1) Notwithstanding subdivisions (a) and (b), for calendar years beginning prior to January 1, 1995, if in the 12-month period ending June 30 of the prior year the cumulative average payment made pursuant to this division or Section 1110, for any deposit periods, as defined under Section 6302 of the Internal Revenue Code and regulations thereunder, was fifty thousand dollars ($50,000) or more, the employer shall remit the total amount of income tax withheld within the number of banking days as specified for federal income taxes by Section 6302 of the Internal Revenue Code and regulations thereunder. For purposes of this subdivision, payment shall be made by electronic funds transfer in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required to make payment by electronic funds transfer of these requirements.

(2) Notwithstanding subdivisions (a) and (b), for calendar years beginning on or after January 1, 1995, if in the 12-month period ending June 30 of the prior year, the cumulative average payment made pursuant to this division or Section 1110 for any deposit periods, as defined under Section 6302 of the Internal Revenue Code and regulations thereunder, was twenty thousand dollars ($20,000) or more, the employer shall remit the total amount of income tax withheld within the number of banking days as specified for federal income taxes by Section 6302 of the Internal Revenue Code and regulations thereunder. For purposes of this subdivision, payment shall be made by electronic funds transfer in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment

is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required by this paragraph to make payments by electronic funds transfer of these requirements.

(3) Any taxpayer required to remit payments pursuant to paragraphs (1) and (2) may request from the department a waiver of those requirements. The department may grant a waiver only if it determines that the particular amounts paid in excess of fifty thousand dollars ($50,000) or twenty thousand dollars ($20,000) as stated in paragraphs (1) and (2), respectively, were not representative of the taxpayer's liability.

(d) Any employer not required to make payment pursuant to subdivision (c) of this section may elect to make payment by electronic funds transfer in accordance with Section 13021.5 under the following conditions:

(1) The election shall be made in a form, and shall contain information, as prescribed by the director, and shall be subject to approval by the department.

(2) If approved, the election shall be effective on the first day of the calendar quarter following approval of the election.

(3) The election shall be operative for one year from the effective date.

(4) Funds remitted by electronic funds transfer shall be deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs.

(e) Notwithstanding Section 1112, no interest or penalties shall be assessed against any employer who remits at least 95 percent of the amount required by subdivision (b) or (c), provided that the failure to remit the full amount is not willful and any remaining amount due is paid with the next payment. The director may allow any employer to submit the amounts due from multiple locations upon a showing that those submissions are necessary to comply with the provisions of subdivision (b) or (c).

(f) The department may, if it believes that action is necessary, require any employer to make the return required by this section and pay to it the tax deducted and withheld at any time, or from time to time but no less frequently than provided for in subdivision (a).

(g) Any employer required to withhold any tax and who is not required to make payment under subdivision (b) shall remit the total amount of income tax withheld during each month of each calendar quarter, on or before the 15th day of the subsequent month if the income tax withheld for any of the three months or, cumulatively for two or more months, is three hundred fifty dollars ($350) or more.

(h) For purposes of subdivisions (a), (b), and (g), payment is

deemed complete when it is placed in a properly addressed envelope, bearing the correct postage, and it is deposited in the United States mail. For purposes of subdivision (c), payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs.

SEC. 7. Section 13059 is added to the Unemployment Insurance Code, to read:

13059. If the Governor declares a state of emergency, the director may extend the time requirements for filing returns, reports, and statements required by this chapter. The extension granted by the director pursuant to this section shall only apply to employers prevented by the conditions giving rise to the state of emergency from timely filing their returns, reports, and statements of wages or timely payment of the taxes due.

SEC. 8. Section 13071 of the Unemployment Insurance Code is amended to read:

13071. If the employer, in violation of the provisions of this division, fails to deduct and withhold the tax under this division, and thereafter the tax against which the tax may be credited is paid or the taxpayer reports to the Franchise Tax Board the wages or gross income against which the tax would have been imposed, the tax so required to be deducted and withheld shall not be collected from the employer, but this section shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable with respect to the failure to deduct and withhold.

CHAPTER 403

An act to amend and supplement the Budget Act of 1993 (Chapter 55 of the Statutes of 1993) by adding Items 3790-301-721, 3790-301-742, and 3790-303-786 to Section 2 thereof, relating to parks and recreation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Item 3790-301-721 is added to Section 2 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993), to read:

PARKLANDS ACQUISITION AND DEVELOPMENT PROGRAM OF 1980

3790-301-721—For capital outlay, Department of Parks and Recreation, payable from the Parklands Fund of 1980 269,000
Schedule:
(1) 90.BC.400 New Brighton SB: Porter-Sesnon Property--acquisition .. 269,000

SEC. 2. Item 3790-301-742 is added to Section 2 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993), to read:

NEJEDLY-HART STATE, URBAN, AND COASTAL PARK BOND ACT PROGRAM

3790-301-742—For capital outlay, Department of Parks and Recreation, payable from the State, Urban, and Coastal Park Fund 284,000
Schedule:
(1) 90.BC.400 New Brighton SB: Porter-Sesnon Property--acquisition 284,000

SEC. 3. Item 3790-303-786 is added to Section 2 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993), to read:

3790-302-786—For capital outlay, Department of Parks and Recreation, payable from the California Wildlife, Coastal, and Park Land Fund of 1988 447,000
Schedule:
(1) 90.BC.400 New Brighton SB: Porter-Sesnon Property--acquisition 447,000

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

In order that funds will be available for an acquisition project in Santa Cruz County which has been pending for a long time and is involved in negotiations between state and local governments, it is necessary that this act take effect immediately.

CHAPTER 404

An act to amend Section 4025 of the Penal Code, relating to jails.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 4025 of the Penal Code is amended to read:

4025. (a) The sheriff of each county may establish, maintain and operate a store in connection with the county jail and for this purpose may purchase confectionery, tobacco and tobacco users' supplies, postage and writing materials, and toilet articles and supplies and to sell these goods, articles, and supplies for cash to inmates in the jail.

(b) The sale prices of the articles offered for sale at the store shall be fixed by the sheriff. Any profit shall be deposited in an inmate welfare fund to be kept in the treasury of the county.

(c) There shall also be deposited in the inmate welfare fund 10 percent of all gross sales of inmate hobbycraft.

(d) There shall be deposited in the inmate welfare fund any money, refund, rebate, or commission received from a telephone company or pay telephone provider when the money, refund, rebate, or commission is attributable to the use of pay telephones which are primarily used by inmates while incarcerated.

(e) The money and property deposited in the inmate welfare fund shall be expended by the sheriff primarily for the benefit, education, and welfare of the inmates confined within the jail. Any funds that are not needed for the welfare of the inmates may be expended for the maintenance of county jail facilities. Maintenance of county jail facilities may include, but is not limited to, the salary and benefits of personnel used in the programs to benefit the inmates, including, but not limited to, education, drug and alcohol treatment, welfare, library, accounting, and other programs deemed appropriate by the sheriff. An itemized report of these expenditures shall be submitted annually to the board of supervisors.

(f) The operation of a store within any other county adult detention facility which is not under the jurisdiction of the sheriff shall be governed by the provisions of this section, except that the board of supervisors shall designate the proper county official to exercise the duties otherwise allocated in this section to the sheriff.

(g) The operation of a store within any city adult detention facility shall be governed by the provisions of this section, except that city officials shall assume the respective duties otherwise outlined in this section for county officials.

(h) The treasurer may, pursuant to Article 1 (commencing with Section 53600), or Article 2 (commencing with Section 53630), of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, deposit, invest, or reinvest any part of the inmate welfare fund, in

excess of that which the treasurer deems necessary for immediate use. The interest or increment accruing on these funds shall be deposited in the inmate welfare fund.

(i) The sheriff may expend money from the inmate welfare fund to provide indigent inmates, prior to release from the county jail or any other adult detention facility under the jurisdiction of the sheriff, with essential clothing and transportation expenses within the county or, at the discretion of the sheriff, transportation to the inmate's county of residence, if the county is within the state or 500 miles from the county of incarceration. This subdivision does not authorize expenditure of money from the inmate welfare fund for the transfer of any inmate to the custody of any other law enforcement official or jurisdiction.

CHAPTER 405

An act to amend Sections 20 and 27020 of the Elections Code, relating to elections, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

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

SECTION 1. Section 20 of the Elections Code is amended to read:

20. "General election" means either of the following:

(a) The election held throughout the state on the first Tuesday after the first Monday of November in each even-numbered year.

(b) Any statewide election held on a regular election date as specified in Section 2500.

SEC. 2. Section 27020 of the Elections Code is amended to read:

27020. The notice of intention shall contain all of the following:

(a) The name and title of the officer sought to be recalled.

(b) A statement, not exceeding 200 words in length, of the reasons for the proposed recall.

(c) The printed name, signature, and business or residence address of each of the proponents of the recall. The minimum number of signatures shall be ten, or equal to the number of signatures required to have been filed on the nomination paper of the officer sought to be recalled, whichever is higher.

(d) The provisions of Section 27023.

SEC. 3. Notwithstanding Section 10218 of the Elections Code or any other provision of law, the California Housing and Jobs Investment Bond Act (Chapter 116 of the Statutes of 1993) shall appear on the November 2, 1993, general election ballot as Proposition 173.

SEC. 4. Notwithstanding paragraph (2) of subdivision (a) of Section 1340.5 of the Elections Code or any other provision of law, any county otherwise authorized to conduct an all-mail ballot election pursuant to Section 1340.5 of the Elections Code may do so at the general election to be held on November 2, 1993.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow the important changes in electoral law made by this act to be in effect at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 406

An act to amend Section 455 of, and to add Section 455.1 to, the Public Utilities Code, relating to public utilities.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 10, 1993.]

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

SECTION 1. The Legislature finds and declares:

(a) The State of California is now recovering from six years of drought, the longest dry spell in the state's modern history.

(b) During that period, water storage in the state's reservoirs dropped to near-record low levels. At the same time, the state's growing population continued to demand an increase in the water supply.

(c) A significant portion of the present and future water needs of California can be met by the use of reclaimed water. Indeed, given current technology, the recycling of water is an effective way to expand the water supply at a reasonable cost to the water consumer.

(d) Recent state policy has mandated the use of reclaimed water where it is deemed to be available and can be provided in adequate quantity and quality. Wastewater treatment facilities and reclaimed water distribution systems are being built all over the state to effectuate this policy.

(e) State policy also recognizes the role of water utility companies

regulated by the California Public Utilities Commission in the distribution of the state's water supply, including reclaimed water. More than 20 percent of the state's urban water users are served by these water companies. Reclaimed water is being made available to water companies so that they may serve reclaimed water to customers in their service areas.

(f) It is the role of the California Public Utilities Commission to ensure the reasonableness of the rates for service charged by California's regulated utilities, including water utility companies.

(g) The prompt approval by the California Public Utilities Commission of rates for reclaimed water sales by water utilities thus is essential to the swift implementation of the state's water policy.

SEC. 2. Section 455 of the Public Utilities Code is amended to read:

455. Whenever any schedule stating an individual or joint rate, classification, contract, practice, or rule, not increasing or resulting in an increase in any rate, is filed with the commission, it may, either upon complaint or upon its own initiative, at once and if it so orders without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, enter upon a hearing concerning the propriety of the rate, classification, contract, practice, or rule. Pending the hearing and the decision thereon the rate, classification, contract, practice, or rule shall not go into effect. Except as provided in Section 455.1, the period of suspension of the rate, classification, contract, practice, or rule shall not extend beyond 120 days beyond the time when it would otherwise go into effect unless the commission extends the period of suspension for a further period not exceeding six months. On the hearing the commission shall establish the rates, classifications, contracts, practices, or rules proposed, in whole or in part, or others in lieu thereof, which it finds to be just and reasonable.

All rates, classifications, contracts, practices, or rules not so suspended shall become effective on the expiration of 30 days from the time of filing thereof with the commission or a lesser time as the commission may grant, subject to the power of the commission, after a hearing had on its own motion or upon complaint, to alter or modify them.

SEC. 3. Section 455.1 is added to the Public Utilities Code, to read:

455.1. Whenever a water corporation files with the commission, pursuant to an advice letter submitted in accordance with commission procedures for this means of submission, a schedule stating rates, classifications, contracts, practices, or rules for the service of reclaimed water, the policies and standards for which are provided for in Article 7 (commencing with Section 13550) of Chapter 7 of Division 7 of the Water Code, the commission shall observe the following procedures:

(a) Unless the commission determines, pursuant to subdivision (b), that the schedule filed by a water corporation for the service of

reclaimed water is not justified or, pursuant to subdivision (c), any other party protests in writing the filing of the schedule, the schedule shall become effective upon the expiration of 40 days from the time of filing thereof.

(b) Notwithstanding the filing of notice of changes or amendments as provided in subdivision (c) or a protest as provided in subdivision (d), the schedule as filed shall become effective on an interim basis upon the expiration of 30 days from the time of filing thereof, subject to refund of any amount of the rate subsequently found by the commission to be in excess of a just and reasonable rate.

(c) If, upon its own initiative, the commission, acting through the staff organization with responsibility for reviewing advice letter filings, determines that the schedule filed by a water corporation for the service of reclaimed water is not justified, it shall notify the water corporation of the determination in writing within 40 days from the time of filing of the schedule and shall state in the notice all changes or amendments to the schedule that are required to make it just and reasonable. Upon the refiling by the water corporation within 10 days of the receipt of the notice of a revised schedule incorporating all changes and amendments specified by the commission, the revised schedule shall become effective on an interim basis subject to refund upon the expiration of five days from the time of the refiling thereof, and shall become final upon formal commission action approving the schedule, as revised.

(d) If any other party, including the commission organization or division created pursuant to Section 309.5, protests in writing the schedule filed by a water corporation for the service of reclaimed water, the commission shall set the matter for a hearing on the protest to be held within a reasonable time from the time that the party files its written protest with the commission.

(e) The provisions of subdivision (d) of Section 311 shall govern the timing of actions by the commission after the close of the record in any proceeding pursuant to subdivision (d).

CHAPTER 407

An act to add Section 66452.11 to the Government Code, relating to land use, and declaring the urgency thereof.

[Approved by Governor September 13, 1993. Filed with Secretary of State September 13, 1993.]

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

SECTION 1. Section 66452.11 is added to the Government Code, to read:

66452.11. (a) The expiration date of any tentative subdivision map or parcel map for which a tentative map has been approved that

has not expired on the date that the act that adds this section becomes effective shall be extended by 24 months.

(b) The extension provided by subdivision (a) shall be in addition to any extension of the expiration date provided for in Section 66452.6 or 66463.5.

(c) Any legislative, administrative, or other approval by any agency of the State of California that pertains to a development project included in a map that is extended pursuant to subdivision (a) shall be extended by 24 months if this approval has not expired on the date that the act that adds this section becomes effective.

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

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

In order to permit cities and counties to preserve development applications that are about to expire and that cannot presently be processed due to prevailing adverse economic conditions in the construction industry, it is necessary that this act take immediate effect.

CHAPTER 408

An act to amend Section 11580.1 of the Insurance Code, relating to insurance.

[Approved by Governor September 16, 1993. Filed with Secretary of State September 17, 1993.]

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

SECTION 1. Section 11580.1 of the Insurance Code is amended to read:

11580.1. (a) No policy of automobile liability insurance described in Section 16054 of the Vehicle Code covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be issued or delivered in this state on or after the

effective date of this section unless it contains the provisions set forth in subdivision (b). However, none of the requirements of subdivision (b) shall apply to the insurance afforded under any such policy (1) to the extent that such insurance exceeds the limits specified in subdivision (a) of Section 16056 of the Vehicle Code, or (2) if such policy contains an underlying insurance requirement, or provides for a retained limit of self-insurance, equal to or greater than the limits specified in subdivision (a) of Section 16056 of the Vehicle Code.

(b) Every policy of automobile liability insurance to which subdivision (a) applies shall contain all of the following provisions:

(1) Coverage limits not less than the limits specified in subdivision (a) of Section 16056 of the Vehicle Code.

(2) Designation by explicit description of, or appropriate reference to, the motor vehicles or class of motor vehicles to which coverage is specifically granted.

(3) Designation by explicit description of the purposes for which coverage for that motor vehicles is specifically excluded.

(4) Provision affording insurance to the named insured with respect to any owned or leased motor vehicle covered by such policy, and to the same extent that insurance is afforded to the named insured, to any other person using such motor vehicle, provided the use is by the named insured or with his or her permission, express or implied, and within the scope of such permission, except that: (i) with regard to insurance afforded for the loading or unloading of any such motor vehicle, the insurance may be limited to apply only to the named insured, a relative of the named insured who is a resident of the named insured's household, a lessee or bailee of the motor vehicle, or an employee of any such person; and (ii) the insurance afforded to any person other than the named insured need not apply to: (A) any employee with respect to bodily injury sustained by a fellow employee injured in the scope and course of his or her employment, or (B) any person, or to any agent or employee thereof, employed or otherwise engaged in the business of selling, repairing, servicing, delivering, testing, road-testing, parking, or storing automobiles with respect to any accident arising out of the maintenance or use of a motor vehicle in connection therewith. As used in this chapter, "owned motor vehicle" includes all motor vehicles described and rated in the policy.

(c) In addition to any exclusion as provided in paragraph (3) of subdivision (b), the insurance afforded by any such policy of automobile liability insurance to which subdivision (a) applies, including the insurer's obligation to defend, may, by appropriate policy provision, be made inapplicable to any or all of the following:

(1) Liability assumed by the insured under contract.

(2) Liability for bodily injury or property damage caused intentionally by or at the direction of the insured.

(3) Liability imposed upon or assumed by the insured under any workers' compensation law.

(4) Liability for bodily injury to any employee of the insured

arising out of and in the course of his employment.

(5) Liability for bodily injury to an insured or liability for bodily injury to an insured whenever the ultimate benefits of that indemnification accrue directly or indirectly to an insured.

(6) Liability for damage to property owned, rented to, transported by, or in the charge of, an insured. A motor vehicle operated by an insured shall be considered to be property in the charge of an insured.

(7) Liability for any bodily injury or property damage with respect to which insurance is or can be afforded under a nuclear energy liability policy.

(8) Any motor vehicle or class of motor vehicles, as described or designated in the policy, with respect to which coverage is explicitly excluded, in whole or in part.

The term "the insured" as used in paragraphs (1), (2), (3), and (4) shall mean only that insured under the policy against whom the particular claim is made or suit brought. The term "an insured" as used in paragraphs (5) and (6) shall mean any insured under the policy including those persons who would have otherwise been included within the policy's definition of an insured but, by agreement, are subject to the limitations of paragraph (1) of subdivision (d).

(d) Notwithstanding the provisions of paragraph (4) of subdivision (b), or the provisions of Article 2 (commencing with Section 16450) of Chapter 3 of Division 7, or Article 2 (commencing with Section 17150) of Chapter 1 of Division 9, of the Vehicle Code, the insurer and any named insured may, by the terms of any policy of automobile liability insurance to which subdivision (a) applies, or by a separate writing relating thereto, agree as to either or both of the following limitations, the agreement to be binding upon every insured to whom such policy applies and upon every third party claimant:

(1) That coverage and the insurer's obligation to defend under the policy shall not apply nor accrue to the benefit of any insured or any third party claimant while any motor vehicle is being used or operated by a natural person or persons designated by name. These limitations shall apply to any use or operation of a motor vehicle including the negligent or alleged negligent entrustment of a motor vehicle to such designated person or persons. The insurer shall have an obligation to defend the named insured when all of the following apply to such designated natural person:

(A) He or she is a resident of the same household as the named insured.

(B) As a result of operating the insured motor vehicle of the named insured, he or she is jointly sued with the named insured.

(C) He or she is an insured under a separate automobile liability insurance policy issued to him or her as a named insured, which policy does not provide a defense to the named insured.

An agreement made by the insurer and any named insured more

than 60 days following the inception of the policy excluding a designated person by name shall be effective from the date of the agreement and shall, with the signature of a named insured, be conclusive evidence of the validity of the agreement.

That agreement shall remain in force as long as the policy remains in force, and shall apply to any continuation, renewal, or replacement of the policy by the named insured, or reinstatement of the policy within 30 days of any lapse thereof.

(2) That with regard to any such policy issued to a named insured engaged in the business of leasing vehicles for those vehicles that are leased for a term in excess of six months, or selling, repairing, servicing, delivering, testing, road-testing, parking, or storing automobiles, coverage shall not apply to any person other than the named insured or his or her agent or employee, except to the extent that the limits of liability of any other valid and collectible insurance available to that person are not equal to the limits of liability specified in subdivision (a) of Section 16056 of the Vehicle Code. If the policy is issued to a named insured engaged in the business of leasing vehicles, which business includes the lease of vehicles for a term in excess of six months, and the lessor includes in the lease automobile liability insurance, the terms and limits of which are not otherwise specified in the lease, the named insured shall incorporate a provision in each vehicle lease contract advising the lessee of the provisions of this subdivision and the fact that this limitation is applicable except as otherwise provided for by statute or federal law.

(e) Nothing in this section or in Section 16054 or 16450 of the Vehicle Code shall be construed to constitute a homeowner's policy, personal and residence liability policy, personal and farm liability policy, general liability policy, comprehensive personal liability policy, manufacturers' and contractors' policy, premises liability policy, special multiperil policy, or any policy or endorsement where automobile liability coverage is offered as incidental to some other basic coverage as an "automobile liability policy" within the meaning of Section 16054 of the Vehicle Code, or as a "motor vehicle liability policy" within the meaning of Section 16450 of the Vehicle Code, nor shall any provision of this section apply to a policy that provides insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle in the Republic of Mexico issued or delivered in this state by a nonadmitted Mexican insurer, notwithstanding that any such policy may provide automobile or motor vehicle liability coverage on insured premises or the ways immediately adjoining.

(f) On and after January 1, 1976, no policy of automobile liability insurance described in subdivision (a) shall be issued, amended, or renewed in this state if it contains any provision that expressly or impliedly excludes from coverage under the policy the operation or use of an insured motor vehicle by the named insured in the performance of volunteer services for a nonprofit charitable organization or governmental agency by providing social service

transportation. This subdivision shall not apply in any case in which the named insured receives any remuneration of any kind other than reimbursement for actual mileage driven in the performance of those services at a rate not to exceed the following:

(1) For the 1980–81 fiscal year, the maximum rate authorized by the State Board of Control, which shall also be known as the "base rate."

(2) For each fiscal year thereafter, the greater of either (A) the maximum rate authorized by the State Board of Control or (B) the base rate as adjusted by the California Consumer Price Index.

No policy of insurance issued under this section may be canceled by an insurer solely for the reason that the named insured is performing volunteer services for a nonprofit charitable organization or governmental agency consisting of providing social service transportation.

For the purposes of this section, "social service transportation" means transportation services provided by private nonprofit organizations or individuals to either individuals who are senior citizens or individuals or groups of individuals who have special transportation needs because of physical or mental conditions and supported in whole or in part by funding from private or public agencies.

(g) Notwithstanding the provisions of paragraph (4) of subdivision (b) of this section, or the provisions of Article 2 (commencing with Section 16450) of Chapter 3 of Division 7 of, or Article 2 (commencing with Section 17150) of Chapter 1 of Division 9 of, the Vehicle Code, a Mexican nonadmitted insurer and any named insured may, by the terms of any policy of automobile insurance for use solely in the Republic of Mexico to which subdivision (a) applies, or by a separate writing relating thereto, agree to the limitation that coverage under that policy shall not apply to any person riding in or occupying a vehicle owned by the insured or driven by another person with the permission of the insured. The agreement shall be binding upon every insured to whom any such policy applies and upon any third party claimant.

(h) No policy of automobile insurance that provides insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle solely in the Republic of Mexico issued by a nonadmitted Mexican insurance company, shall be subject to, or provide coverage for, those coverages provided in Section 11580.2.

CHAPTER 409

An act to amend Sections 830.3 and 13510.5 of the Penal Code, relating to peace officers, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 1993. Filed with Secretary of State September 17, 1993.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Investigators of the Toxic Substances Control Program were peace officers within the State Department of Health Services until July 17, 1991.

(b) On July 17, 1991, investigators within the State Department of Health Services Toxic Substances Control Program became peace officers within the Department of Toxic Substances Control pursuant to the Governor's Reorganization Plan No. 1 of 1991.

(c) The Legislature at all times intended for investigators within the Department of Toxic Substances Control to be and to remain peace officers.

(d) The Legislature intended for the Department of Toxic Substances Control to employ peace officers, including, but not limited to, those peace officers who were employed previously by the Toxic Substances Control Program within the State Department of Health Services.

SEC. 2. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as specified by their employing agencies:

(a) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Medical Board of California and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(b) Voluntary fire wardens designated by the Director of Forestry and Fire Protection pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of this code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Inspectors of the food and drug section designated by the chief pursuant to subdivision (a) of Section 216 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 216 of that code.

(g) All investigators of the Division of Labor Standards Enforcement designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, and Alcohol and Drug Programs, the Department of Toxic Substances Control, and the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators designated by the chief, provided that the primary duty of those investigators shall be enforcement of Section 550 of the Penal Code.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other law, except as authorized by the Controller, the peace officers designated pursuant to this subdivision shall not carry firearms.

(*l*) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary

duty of these investigators shall be enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) Investigators of the office of the Secretary of State designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of, and Section 12172.5 of, the Government Code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The chief and assistant chief of museum security and safety of the California Museum of Science and Industry, as designated by the executive director pursuant to Section 4108 of the Food and Agricultural Code, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 4108 of the Food and Agricultural Code.

(s) Notwithstanding any other provision of this section, a peace officer authorized by this section shall not be authorized to carry firearms by his or her employing agency until that agency has adopted a policy on the use of deadly force by those peace officers, and until those peace officers have been instructed in the employing

agency's policy on the use of deadly force.

Every peace officer authorized pursuant to this section to carry firearms by his or her employing agency shall qualify in the use of the firearms at least every six months.

SEC. 3. Section 13510.5 of the Penal Code is amended to read:

13510.5. For the purpose of maintaining the level of competence of state law enforcement officers, the commission shall adopt, and may, from time to time amend, rules establishing minimum standards for training of peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who are employed by any railroad company, the California State Police Division, the University of California Police Department, a California State University police department, the Department of Alcoholic Beverage Control, the Division of Investigation of the Department of Consumer Affairs, the Wildlife Protection Branch of the Department of Fish and Game, the Department of Forestry and Fire Protection, the Department of Motor Vehicles, the California Horse Racing Board, the State Fire Marshal, the Bureau of Food and Drug, the Division of Labor Law Enforcement, the Director of Parks and Recreation, the State Department of Health Services, the Department of Toxic Substances Control, the State Department of Social Services, the State Department of Mental Health, the State Department of Developmental Services, the State Department of Alcohol and Drug Programs, the Office of Statewide Health Planning and Development, and the Department of Justice. All rules shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 4. This act is declaratory of existing law.

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

In order to provide adequate enforcement for the provisions of the Hazardous Waste Control Act, thereby protecting the public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 410

An act to amend Sections 25123.3, 25171.5, 25200.4, 25201.6, 25205.2, 25205.4, 25205.7, and 25205.12 of the Health and Safety Code, and to add Section 43152.16 to the Revenue and Taxation Code, relating to hazardous waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1993. Filed with Secretary of State September 21, 1993.]

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

SECTION 1. Section 25123.3 of the Health and Safety Code is amended to read:

25123.3. (a) For purposes of this section, the following terms have the following meaning:

(1) "Liquid hazardous waste" means a hazardous waste that meets the definition of free liquids, as specified in Section 66260.10 of Title 22 of the California Code of Regulations, as that section read on January 1, 1994.

(2) "Transfer facility" means any offsite facility which is related to the transportation of hazardous waste, including, but not limited to, loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(b) "Storage facility" means a hazardous waste facility at which the hazardous waste meets any of the following requirements:

(1) The hazardous waste is held in containers or tanks for greater than 90 days at an onsite facility.

(2) Liquid hazardous waste is held at an onsite facility in tanks for any period of time and the quantity of the liquid hazardous waste in any individual tank exceeds 5,000 gallons or the aggregate amount of liquid hazardous waste stored in tanks at the facility exceeds 50,000 gallons. For purposes of this paragraph, these quantities do not include liquid hazardous waste stored in a portable tank used for a period of not more than 60 calendar days at an onsite facility or liquid hazardous waste accumulated onsite which has been generated from onsite maintenance operations which occur less frequently than annually or liquid hazardous waste which is held, as part of the ongoing treatment of that waste, in a tank which is authorized by the department to perform that treatment for that waste.

(3) The hazardous waste is held in containers or tanks for any period of time at an offsite facility which is not a transfer facility.

(4) (A) Except as provided in subparagraph (B), the hazardous waste is held in containers or tanks at a transfer facility for periods greater than 144 hours.

(B) The department may extend the period of time specified in subparagraph (A) for hazardous waste which is generated as a result

of an emergency release and which is collected and temporarily stored by emergency rescue personnel, as defined in Section 25501, or by a response action contractor, as defined in Section 25364.6, upon the request of emergency rescue personnel or the response action contractor. Notwithstanding any other provision of law, a transfer facility which holds hazardous waste for periods greater than 144 hours pursuant to this subparagraph shall not be classified as a storage facility.

(5) The liquid hazardous waste is held at an onsite facility in any individual container of less than 5,000 gallons for any period of time, and the aggregate amount of liquid hazardous waste stored in those containers, exclusive of tanks, at the facility exceeds 50,000 gallons. For purposes of this paragraph, this quantity does not include liquid hazardous waste being accumulated at an initial accumulation point pursuant to subdivision (d).

(6) The hazardous waste is held at any facility for any period of time in a manner other than in a container or tank.

(7) (A) Except as provided in subparagraph (B), the hazardous waste is held at a transfer facility for any period of time and handling occurs.

(B) Notwithstanding subparagraph (A), a transfer facility is not a storage facility if the hazardous waste is held in containers or tanks at a transfer facility for a period of 144 hours or less and no handling occurs, other than the transfer of packed or containerized hazardous waste from one vehicle to another.

(c) The time period for calculating the 90-day period for purposes of paragraph (1) of subdivision (b) begins when the facility has accumulated 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste. However, if the facility generates more than 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste during any calendar month, the time period begins when any amount of hazardous waste first begins to accumulate in that month.

(d) Notwithstanding paragraph (1) of subdivision (b), a generator of hazardous waste that accumulates waste onsite is not a storage facility if all of the following requirements are met:

(1) The generator accumulates a maximum of 55 gallons of hazardous waste, one quart of acutely hazardous waste, or one quart of extremely hazardous waste at an initial accumulation point which is at or near the area where the waste is generated and which is under the control of the operator of the process generating the waste.

(2) The generator accumulates the waste in containers other than tanks.

(3) The generator does not hold the hazardous waste onsite for more than one year from the initial date of accumulation, or 90 days from the date the quantity limitation specified in paragraph (1) of this subdivision is reached, whichever occurs first.

(4) The generator labels any container used for the accumulation

of hazardous waste with the initial date of accumulation and with the words "hazardous waste" or other words that identify the contents of the container.

(5) Within three days of reaching any applicable quantity limitation specified in paragraph (1), the generator labels the container holding the accumulated hazardous waste with the date the quantity limitation was reached and either transports the waste offsite or holds the waste onsite and complies with the regulations adopted by the department establishing requirements for personnel training, preparedness and prevention, and contingency plans and emergency procedures applicable to storage facilities.

(6) The generator complies with regulations adopted by the department pertaining to the use and management of containers and any other regulations adopted by the department to implement this subdivision.

(7) The generator does not otherwise meet the definition of a storage facility.

SEC. 2. Section 25171.5 of the Health and Safety Code is amended to read:

25171.5. The department shall report on the effectiveness and environmental and public health impacts associated with the implementation of the Wright-Polanco-Lempert Hazardous Waste Treatment Permit Reform Act of 1992 (Chapter 1345 of the Statutes of 1992) in each biennial report required pursuant to Section 25171. The report shall address the onsite treatment program and the standardized permit program, by including both of the following:

(a) The report on the onsite treatment program shall include all of the following:

(1) A summary of inspection results at facilities, organized by the type of treatment process or the type of facility.

(2) A list and a description of any occurrences of unauthorized or accidental releases to the environment from both regulated and exempt facilities and the status of any corrective actions which have been taken at those facilities.

(3) Recommendations concerning statutory modifications, if any, which the department determines are appropriate for generators conducting different types of hazardous waste treatment pursuant to permit-by-rule, and by Sections 25200.3 and 25201.5. In developing these recommendations, the department shall consider at least all of the following:

(A) The compliance record at the facilities.

(B) The potential for accidental or unauthorized releases from the unit.

(C) The effectiveness and reliability of the treatment technologies employed at the facilities.

(D) The cost of compliance with existing or proposed requirements.

(b) The report on the standardized permit program shall include all of the following:

(1) A summary of the results of the inspection program established pursuant to subdivision (j) of Section 25201.6.

(2) A description of any occurrences of unauthorized or accidental release to the environment identified through the phase I environmental assessment or other means, and the status of corrective action at those facilities.

(3) Recommendations for changes to the statutes authorizing the standardized permitting program which the department determines would be necessary to increase the efficiency or effectiveness of the program or to increase protection of the public health and safety and the environment.

SEC. 3. Section 25200.4 of the Health and Safety Code is amended to read:

25200.4. (a) Any application to use and operate a hazardous waste facility made pursuant to Section 25200, other than one submitted by a federal, state, or local agency, shall include a disclosure statement.

(b) The department shall take into consideration information provided by the applicant in the disclosure statement, any information made available to the department pursuant to Section 25186.5, and any information contained in the written report prepared pursuant to Section 25186.3, in making a decision pursuant to Section 25186 whether to issue or deny a hazardous waste facilities permit to use and operate the hazardous waste facility.

(c) Notwithstanding this article, the department shall not issue a hazardous waste facilities permit unless it has provided, or caused to be provided, public notice in a newspaper of general circulation within the area affected by the proposed facility of its consideration of a hazardous waste facilities permit application for the proposed facility. If the department has information that the applicant, or the applicant under any previous name or names, or, if the applicant is a business concern, any officer, director, or partner of the business concern, has been named as a party in an action in any court or administrative tribunal involving violation of any statute, regulation, or requirement specified in Section 25186, and that a conviction, judgment, or settlement has been entered during a three-year period preceding the date of application, the public notice required by this section, and any other public notice which the department is required to provide relating to the issuance of the hazardous waste facilities permit, shall include a statement that information regarding the facility owner's environmental compliance record is included in the administrative record for the proposed permit.

(d) The notice required by subdivision (c) shall be in addition to, and shall not supplant, the notice required by subdivision (a) of Section 25199.7.

(e) The requirements of this section do not apply to treatment activities authorized pursuant to a permit-by-rule under the regulations adopted by the department, a generator operating pursuant to a grant of conditional authorization pursuant to Section

25200.3, or a generator who is performing treatment in accordance with subdivision (a) or (c) of Section 25201.5.

(f) Notwithstanding Section 25112.5, a disclosure statement for an application for a series C standardized permit, as specified in Section 25201.6, shall consist of documentation of any convictions, judgments, settlements, or orders resulting from an action by any local, state, or federal environmental or public health enforcement agency concerning the operation of the facility within the last three years, as the documents would be available under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of the Civil Code), except that the owner or operator of a facility issued a series C standardized permit shall make the information specified in Section 25112.5 available to the department upon request.

(g) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1997, deletes or extends that date.

SEC. 4. Section 25201.6 of the Health and Safety Code is amended to read:

25201.6. (a) For purposes of this section and Section 25205.2, the following terms have the following meaning:

(1) "Series A standardized permit" means a permit issued to a facility that meets one of the following conditions:

(A) The total influent volume of liquid hazardous waste treated is greater than 50,000 gallons per calendar month.

(B) The total volume of solid hazardous waste treated is greater than 100,000 pounds per calendar month.

(C) Where both liquid and solid hazardous wastes are being treated, either the total volume of liquid waste treated exceeds the volume specified in subparagraph (A), or the total volume of solid hazardous waste treated exceeds the volume specified in subparagraph (B).

(D) The total facility storage design capacity is greater than 500,000 gallons for liquid hazardous waste.

(E) The total facility storage design capacity is greater than 500 tons for solid hazardous waste.

(F) Where both liquid and solid hazardous waste are being stored, the total volume of liquid waste stored exceeds the volume specified in subparagraph (D), or the total volume of solid hazardous waste stored exceeds the volume specified in subparagraph (E).

(G) A volume of liquid or solid hazardous waste is stored at the facility for more than one calendar year.

(2) "Series B standardized permit" means a permit issued to a facility that does not store liquid or solid hazardous waste of any period of more than one calendar year, and that meets one of the following conditions:

(A) The total influent volume of liquid hazardous waste treated

is greater than 5,000 gallons but less than 50,000 gallons per calendar month.

(B) The total volume of solid hazardous waste treated is greater than 10,000 pounds but less than 100,000 pounds per calendar month.

(C) Where both liquid and solid hazardous wastes are being treated, the total volume of liquid hazardous waste treated does not exceed the volume specified in subparagraph (A), and the volume of solid hazardous waste treated does not exceed the volume specified in subparagraph (B).

(D) The total facility storage design capacity is greater than 50,000 gallons but less than 500,000 gallons for liquid hazardous waste.

(E) The total facility storage design capacity is greater than 100,000 pounds but less than 500 tons for solid hazardous waste.

(F) Where both liquid and solid hazardous wastes are being stored, the total volume of liquid hazardous waste stored does not exceed the volume specified in subparagraph (D), and the total volume of solid hazardous waste stored does not exceed the volume specified in subparagraph (E).

(3) "Series C standardized permit" means a permit issued to a facility that does not store liquid or solid hazardous waste for any period for more than one calendar year, that, except as provided in subparagraph (G), does not treat or store reactive, ignitable or extremely hazardous waste, that does not conduct thermal treatment of hazardous waste, with the exception of evaporation, and meets one of the following conditions:

(A) The total influent volume of liquid hazardous waste treated does not exceed 5,000 gallons per calendar month.

(B) The total volume of solid hazardous waste treated does not exceed 10,000 pounds per calendar month.

(C) Where both liquid and solid hazardous wastes are being treated, the total volume of liquid hazardous waste treated does not exceed the volume specified in subparagraph (A), and the total volume of solid hazardous wastes treated does not exceed the volume specified in subparagraph (B).

(D) The total facility storage design capacity does not exceed 50,000 gallons for liquid hazardous waste.

(E) The total facility storage design capacity does not exceed 100,000 pounds for solid hazardous waste.

(F) Where both liquid and solid hazardous wastes are being stored, the total volume of liquid hazardous waste stored does not exceed the volume specified in subparagraph (D) and the total volume of solid hazardous waste stored does not exceed the volume specified in subparagraph (E).

(G) Notwithstanding any other provision of this paragraph, a permanent household hazardous waste collection facility operating pursuant to a series C standardized permit may store and bulk reactive, ignitable, and extremely hazardous waste.

(b) The department shall adopt regulations specifying standardized hazardous waste facilities permit application forms that

may be completed by an offsite non-RCRA series A, B, or C treatment, storage, or treatment and storage facility, in lieu of other hazardous waste facility permit application procedures set forth in regulations. The department shall not issue permits under this section to specific classes of facilities unless the department finds that doing so will not create a competitive disadvantage to a member or members of that class which were in compliance with the permitting requirements which were in effect on September 1, 1992.

(c) The regulations adopted pursuant to subdivision (b) shall include all of the following:

(1) Require that the standardized permit notification be submitted to the department on or before October 1, 1993, for facilities existing on or before September 1, 1992. The standardized permit notification shall include, at a minimum, the information required for a Part A application as described in Section 66270.13 of Title 22 of the California Code of Regulations.

(2) Require that the standardized permit application be submitted to the department within six months of the submittal of the standardized permit notification, except that a facility that submits a notification prior to October 1, 1993, may submit a permit application on or before April 1, 1994. The standardized permit application shall require, at a minimum, that the following information be submitted to the department for review prior to the final permit determination:

(A) A description of the treatment and storage activities to be covered by the permit, including the type and volumes of waste, the treatment process, equipment description, and design capacity.

(B) A copy of the closure plan as required by paragraph (13) of subdivision (b) of Section 66270.14 of Title 22 of the California Code of Regulations.

(C) A description of the corrective action program, as required by Section 25200.10.

(D) Financial responsibility documents specified in paragraph (17) of subdivision (b) of Section 66270.14 of Title 22 of the California Code of Regulations.

(E) A copy of the topographical map as specified in paragraph (18) of subdivision (b) of Section 66270.14 of Title 22 of the California Code of Regulations.

(F) A description of the individual container, and tank and containment system, and of the engineer's certification, as specified in Sections 66270.15 and 66270.16 of Title 22 of the California Code of Regulations.

(G) Documentation of compliance, if applicable, with the requirements of Article 8.7 (commencing with Section 25199).

(3) Require that a facility operating pursuant to a standardized permit comply with the liability assurance requirements in Section 25200.1.

(4) Specify which of the remaining elements of the permit application as described in subdivision (b) of Section 66270.14 of the

California Code of Regulations shall be the subject of a certification of compliance by the applicant.

(5) Establish a procedure for imposing an administrative penalty pursuant to Section 25187, in addition to any other penalties provided by this chapter, upon an owner or operator of an offsite non-RCRA treatment or storage facility who does not submit a standardized permit notification to the department on or before October 1, 1993, pursuant to paragraph (1), and who continues to operate the facility without obtaining a hazardous waste facilities permit or other grant of authorization from the department after October 1, 1993. In determining the amount of the administrative penalty to be assessed, the regulations shall require the amount to be based upon the economic benefit gained by that owner or operator as a result of failing to comply with this section.

(6) Require that a facility operating pursuant to a standardized permit comply, at a minimum, with the interim status facility operating requirements specified in the regulations adopted by the department, except that the regulations adopted pursuant to this section may specify financial assurance amounts necessary to adequately respond to damage claims at levels that are less than those required for interim status facilities if the department determines that lower financial assurance levels are appropriate.

(d) (1) Any regulations adopted pursuant to this section may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) On and before January 1, 1995, the adoption of the regulations pursuant to paragraph (1) is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(e) The department shall take final action on each standardized permit application within 18 months after the application is submitted to the department. The department may not grant a permit under this section unless the department has determined the adequacy of the material submitted with the application and has conducted an inspection of the facility and determined all of the following:

(1) The treatment process is an effective method of treating the waste, as described in the permit application.

(2) The corrective action plan is appropriate for the facility.

(3) The financial assurance is sufficient for the facility.

(f) Interim status shall not be granted to a facility which does not submit a standardized permit notification on or before October 1, 1993. Interim status shall be revoked if the permit application is not submitted within six months of the permit notification. Interim status granted to any facility pursuant to this section and Sections 25200.5 and 25200.9 shall terminate upon a final permit determination or June 1, 1995, whichever date is earlier. An offsite non-RCRA

treatment facility operating pursuant to interim status which applies for a permit pursuant to this section shall pay fees to the department in an amount equal to the fees established by Section 25205.4 for the same size and type of facility.

(g) A facility treating used oil or solvents, or which engages in incineration, thermal destruction, or any land disposal activity, is not eligible for a standardized permit pursuant to this section.

(h) Offsite non-RCRA treatment facilities operating pursuant to this section shall comply with Article 4 (commencing with Section 66270.40) of Chapter 20 of Division 4.5 of Title 22 of the California Code of Regulations.

(i) (1) The department shall require an owner or operator applying for a standardized permit to complete and file a phase I environmental assessment with the application. However, if a RCRA facility assessment has been performed by the department, the assessment shall be deemed to satisfy the requirement of this subdivision to complete and file a phase I environmental assessment, and the facility shall not be required to submit a phase I environmental assessment with its application.

(2) (A) For purposes of this subdivision, the phase I environmental assessment shall include a preliminary site assessment, as described in subdivision (b) of Section 25200.14, except that the phase I environmental assessment shall also include a certification, signed, except as provided in subparagraph (B), by the owner, and also by the operator if the operator is not the owner, of the facility and an independent professional engineer, geologist, or environmental assessor registered in the state.

(B) Notwithstanding subparagraph (A), the certification for a permanent household waste collection facility may be signed by any professional engineer, geologist, or environmental assessor registered in the state, including, but not limited to, such a person employed by the governmental entity, but if the facility owner is not a governmental entity, the engineer, geologist, or assessor signing the certification shall not be employed by, or be an agent of, the facility owner.

(3) The certification specified in paragraph (2) shall state whether evidence of a release of hazardous waste or hazardous constituents has been found.

(4) If evidence of a release has been found, the facility shall complete a detailed site assessment to determine the nature and extent of any contamination resulting from the release and shall submit a corrective action plan to the department, within one year of submittal of the standardized permit application.

(j) The department shall establish an inspection program to identify, inspect, and bring into compliance any non-RCRA treatment, storage, or treatment and storage facility which is operating without a permit or other grant of authorization from the department for that treatment or storage activity.

(k) An offsite non-RCRA treatment, storage, or treatment and

storage facility authorized to operate pursuant to a hazardous waste facility permit issued pursuant to Section 25200 may operate pursuant to a series A, B, or C standardized permit by completing the appropriate permit modification procedure specified in the regulations for such a modification.

(*l*) Notwithstanding any other provision of law, the permit modification fee imposed pursuant to subdivision (i) of Section 25205.7 for a modification made pursuant to subdivision (k) shall be the appropriate class 1, 2, or 3 standardized permit modification fee specified in subdivision (i) of Section 25205.7.

SEC. 5. Section 25205.2 of the Health and Safety Code is amended to read:

25205.2. (a) Except as provided in subdivision (c), in addition to the fees specified in Section 25174.1, each operator of a facility shall pay a facility fee for each reporting period, or any portion thereof, to the board based on the size and type of the facility, as specified in Section 25205.4. On or before January 31 of each calendar year, the department annually shall notify the board of all known facility operators by facility type and size. The department shall also notify the board of any operator who is issued a permit or grant of interim status within 30 days from the date that the permit or grant of interim status is issued to the operator. The fee specified in this section does not apply to facilities operating pursuant to a permit-by-rule, as specified in Section 25205.12.

(b) The board shall deposit all fees collected pursuant to subdivision (a) in the Hazardous Waste Control Account in the General Fund. The fees so deposited may be expended by the department, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25174.

(c) Notwithstanding subdivision (a), a person who is issued a variance by the department from the requirement of obtaining a hazardous waste facilities permit or grant of interim status, or a person who is in a closure period approved by the department pursuant to Article 9 (commencing with Section 25200) and Article 12 (commencing with Section 25245), is not subject to the fee, for any reporting period following the reporting period in which the variance or closure was granted or approved by the department or in the reporting period following any reporting period in which the facility has completed all activities that are necessary for the department to approve the closure, including, but not limited to, the submittal of a certification that these activities are completed to the department.

(d) Notwithstanding subdivision (a), a facility operating pursuant to a standardized permit, as specified in Section 25201.6, is exempt from the annual facility fee imposed by this section for a period of time equal to the number of years that the facility lawfully operated prior to the operative date of the act amending this section pursuant to a hazardous waste facility permit or other grant or authorization and paid facility fees for the operation of the facility pursuant to this

section.

SEC. 6. Section 25205.4 of the Health and Safety Code is amended to read:

25205.4. (a) The base rate for the facility fee imposed by Section 25205.2 for the 1991–92 fiscal year is the base rate for the 1991 reporting period, as established pursuant to this section as it read on June 30, 1991. Commencing with the 1992 reporting period, and for each reporting period thereafter, the board shall adjust the base rate annually to reflect increases or decreases in the cost-of-living measured by the Consumer Price Index issued by the United States Department of Labor or by a successor agency of the federal government.

(b) The determination of the facility fee pursuant to this section, including the redetermination of the base rate, is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Except as provided in subdivision (e), in computing the facility fees, all of the following shall apply:

(1) The fee to be paid by a ministorage facility shall equal 25 percent of the base facility rate.

(2) The fee to be paid by a small storage facility shall equal the base facility rate.

(3) The fee to be paid by a large storage facility shall equal twice the base facility rate.

(4) The fee to be paid by a minitreatment facility shall equal 50 percent of the base facility rate.

(5) The fee to be paid by a small treatment facility shall equal twice the base facility rate.

(6) The fee to be paid by a large treatment facility shall equal three times the base facility rate.

(7) The fee to be paid by a disposal facility until closure is approved shall equal 10 times the base facility rate.

(8) The fee to be paid by a facility with a postclosure permit shall be seven thousand five hundred dollars ($7,500) annually for a small facility, fifteen thousand dollars ($15,000) annually for a medium facility, and twenty-two thousand five hundred dollars ($22,500) for a large facility during the first five years of the postclosure period. The fee to be paid by a facility with a postclosure permit during the remaining years of the postclosure care period shall be four thousand dollars ($4,000) annually for a small facility, eight thousand dollars ($8,000) annually for a medium facility, and thirteen thousand five hundred dollars ($13,500) annually for a large facility.

(d) If a facility falls into more than one category listed in subdivision (c), multiple operations under a single hazardous waste facility permit or grant of interim status fall into more than one category listed in subdivision (c), the facility operator shall pay only the rate for the facility category which is the highest rate.

(e) Notwithstanding subdivision (c), the facility fee for a facility operating under a standardized permit shall be as follows:

(1) The fee to be paid for a facility operating pursuant to a series A standardized permit shall be fifteen thousand three hundred seventy-three dollars ($15,373).

(2) The fee to be paid for a facility operating pursuant to a series B standardized permit shall be seven thousand two hundred five dollars ($7,205).

(3) Except as specified in paragraph (4), the fee to be paid for a facility operating pursuant to a series C standardized permit shall be six thousand fifty-one dollars ($6,051).

(4) The fee for a facility operating pursuant to a series C standardized permit is three thousand twenty-five dollars ($3,025) if the facility meets all of the following conditions:

(A) The facility treats not more than 1,500 gallons of liquid hazardous waste and not more than 3,000 pounds of solid hazardous waste in any calendar month.

(B) The total facility storage capacity does not exceed 15,000 gallons of liquid hazardous waste and 30,000 pounds of solid hazardous waste.

(C) If the facility both treats and stores hazardous waste, the facility does not exceed the volume limitations specified in subparagraphs (A) and (B) for each individual activity.

(f) The fee imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

SEC. 7. Section 25205.7 of the Health and Safety Code is amended to read:

25205.7. (a) The board shall assess a fee for any application for a new hazardous waste facility permit, a permit for a hazardous waste facility which would manage extremely hazardous waste, a variance, or a permit modification issued by the department pursuant to this chapter or the regulations adopted pursuant to this chapter. The board shall also assess a fee for any hazardous waste facility which intends to operate pursuant to a permit-by-rule governed by this chapter or the regulations adopted pursuant to this chapter. The fee shall be nonrefundable, even if the application is withdrawn or the permit, variance, or certification is denied. The department shall provide the board with any information which is necessary to assess fees pursuant to this section. The fee shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the Hazardous Waste Control Account. A hazardous waste facility which is assessed a fee pursuant to more than one of subdivisions (c) to (h), inclusive, shall pay only the higher fee.

(b) The amounts stated in this section shall be base rates for the 1989–90 fiscal year. Thereafter the fees shall be adjusted annually to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index for the United States, as reported by the Department of Labor or a successor agency of the United States government. The fee shall be assessed upon application or

notification to the department.

(c) A person submitting a hazardous waste facility permit application for a land disposal facility shall pay eighty-three thousand dollars ($83,000) for a small facility, one hundred seventy-seven thousand dollars ($177,000) for a medium facility, and three hundred four thousand dollars ($304,000) for a large facility.

(d) A person submitting a hazardous waste facility permit application for any incinerator shall pay fifty thousand dollars ($50,000) for a small facility, one hundred six thousand dollars ($106,000) for a medium facility, and one hundred eighty-two thousand dollars ($182,000) for a large facility.

(e) (1) Except as provided in paragraphs (2) and (3), a person submitting a hazardous waste facility permit application for a storage facility, a treatment facility, or a storage and treatment facility shall pay seventeen thousand dollars ($17,000) for a small facility, thirty-one thousand dollars ($31,000) for a medium facility, and sixty thousand dollars ($60,000) for a large facility.

(2) A person submitting an application for a standardized permit for a storage facility, a treatment facility, or a storage and treatment facility, as specified in Section 25201.6, shall pay thirty thousand fifty-one dollars ($30,051) for a series A standardized permit, eighteen thousand seven hundred sixty-two dollars ($18,762) for a series B standardized permit, and five thousand dollars ($5,000) for a series C standardized permit. The board shall assess these fees based upon the classifications specified in subdivision (a) of Section 25201.6.

(3) In addition to the fees specified in paragraph (2), the board shall assess a fee equal to the department's costs in reviewing and overseeing any corrective action program described in the application for a standardized permit pursuant to subparagraph (C) of paragraph (2) of subdivision (c) of Section 25201.6, and in reviewing and overseeing any corrective action work undertaken at the facility pursuant to that corrective action program.

(f) A person submitting a hazardous waste facilities permit application for a transportable treatment unit shall pay thirteen thousand dollars ($13,000) for a small unit, thirty thousand dollars ($30,000) for a medium unit, and sixty thousand dollars ($60,000) for a large unit.

(g) (1) A person submitting a request for a variance shall pay three thousand dollars ($3,000) for a variance from any hazardous waste storage requirements imposed by this chapter, three hundred dollars ($300) for a variance issued pursuant to Section 25179.8, three hundred dollars ($300) for a variance to allow the use of a test method or analytical method which is an alternative to the methods prescribed by regulation for use in classifying a waste, eight hundred dollars ($800) for a variance from the requirements for hazardous waste haulers imposed by this chapter.

(A) A person submitting a request for a variance not otherwise listed in this paragraph shall pay eight thousand dollars ($8,000),

unless the applicant is a small business and the department determines in its discretion that payment of this fee would cause financial or other unreasonable hardship to the applicant. If that finding is made, the department may assess the applicant up to 50 percent of the standard fee. For the purposes of this subparagraph, "small business" means a business which is independently owned and operated, has 25 employees or less, and has a gross annual income which does not exceed two million dollars ($2,000,000).

(B) If the variance application requests a variance from more than one specific statute or regulation, a separate fee may be assessed for each statute or regulation from which the variance is requested.

(2) If the variance contains no significant changes from a variance previously issued to the same owner or operator, the fee shall be 25 percent of the amount otherwise provided for by this section. A change is a significant change if, had it been made to a permit, it would have been a class 2 or class 3 modification, as specified in subdivision (i).

(3) Any variance granted pursuant to Article 6.6 (commencing with Section 66565) of Chapter 30 of Division 4 of Title 22 of the California Code of Regulations is not subject to a fee under this section.

(h) A person applying for approval of an application to manage extremely hazardous waste shall pay two hundred dollars ($200), in addition to any other fee imposed by this section.

(i) (1) A person requesting a class 1 permit modification, as defined in the regulations, shall pay a fee of one thousand five hundred dollars ($1,500), except a person requesting a class 1 permit modification to a standardized permit issued pursuant to Section 25201.6 shall pay a fee of seven hundred fifty dollars ($750).

(2) A person requesting a class 2 permit modification, as defined in the regulations, shall pay a fee equal to 40 percent of the fee for a new hazardous waste facilities permit for that facility, except that person shall pay 30 percent of the fee for a new permit for a land disposal facility or an incinerator, and except that a person requesting a class 2 permit modification to a standardized permit issued pursuant to Section 25201.6 shall pay a fee equal to 40 percent of the fee for a new standardized permit for that facility.

(3) A person requesting a class 3 permit modification, as defined in the regulations, shall pay a fee equal to 80 percent of the fee for a new hazardous waste facilities permit for that facility, except that person shall pay 60 percent of the fee for a new permit for a land disposal facility or an incinerator, and except that a person requesting a class 3 permit modification to a standardized permit issued pursuant to Section 25201.6 shall pay a fee equal to 80 percent of the fee for a new standardized permit for that facility.

(j) Permits for postclosure shall be required for hazardous waste facilities if hazardous wastes remain after closure which will not be subject to the requirements of any other hazardous waste facilities permit issued by the department at the time of postclosure permit

approval.

(1) A person submitting a hazardous waste facilities permit application for a postclosure permit shall pay a fee of eight thousand dollars ($8,000) for a small facility, eighteen thousand dollars ($18,000) for a medium facility, and thirty thousand dollars ($30,000) for a large facility.

(2) For purposes of this subdivision and paragraph (8) of subdivision (c) of Section 25205.4, and notwithstanding subdivision (k), any facility or unit is "small" if 0.5 tons (1,000 pounds) or less of hazardous waste remain after closure, "medium" if more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste remain after closure, and "large" if 1,000 or more tons of hazardous waste remain after closure.

(k) For purposes of this section, and notwithstanding Section 25205.1, any facility or unit is "small" if it manages 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the state's current fiscal year, "medium" if it manages more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the state's current fiscal year, and "large" if it manages 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year.

(*l*) The fees assessed pursuant to this section do not apply to any permit or variance to operate a research, development, and demonstration facility, if the duration of the permit or variance is not longer than one year, unless the permit or variance is renewed pursuant to the regulations adopted by the department. For purposes of this section, a "research, development, and demonstration facility" is a facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which regulations prescribing permit standards have not been adopted.

(m) The fees assessed pursuant to this section do not apply to any of the following:

(1) An extremely hazardous waste permit or to any variance issued to a local government agency to transport wastes for purposes of operating a household hazardous waste facility or to transport wastes from a household hazardous waste facility receiving hazardous waste from small quantity commercial sources pursuant to Section 25258.1.

(2) A permanent household hazardous waste collection facility.

(n) The fees assessed pursuant to subdivision (h) do not apply to any government agency for hazardous wastes which result when the government agency, or its contractor, investigates, removes, or remedies a release of hazardous waste caused by another person.

(o) In each instance when a government agency uses its extremely hazardous waste permit for emergency response activities, the government agency shall send a copy of the permit to the department.

(p) Except as provided in paragraph (3) of subdivision (e), the

department shall not assess any fees for the department's costs in reviewing and overseeing a corrective action taken in conjunction with a hazardous waste facilities permit application.

SEC. 8. Section 25205.12 of the Health and Safety Code is amended to read:

25205.12. (a) The operator of a hazardous waste facility authorized by the department to operate pursuant to a permit-by-rule, under a grant of conditional authorization pursuant to Section 25200.3, or pursuant to subdivision (a) or (c) of Section 25201.5 is exempt from the facility fee specified in Section 25205.2 for any activities authorized by the permit-by-rule, under a grant of conditional authorization pursuant to Section 25200.3, or exempted pursuant to subdivision (a) or (c) of Section 25201.5, at that facility for any year or reporting period during which the facility is operating.

(b) The retroactive portion of the facility fee exemption provided by subdivision (a) does not apply to any facility which was authorized by the department to operate on or before June 1, 1991, for any fees paid or billed prior to January 1, 1993.

(c) The operator of a hazardous waste facility eligible to operate pursuant to a standardized permit, as specified in Section 25201.6, is exempt from the facility fee specified in Sections 25205.2 and 25205.4 for any year or reporting period prior to January 1, 1993, during which the facility operated, if the hazardous waste treatment or storage activity was conducted prior to January 1, 1993, the owner or operator is in compliance with the notification and application requirements of Section 25201.6, as amended in the 1993–94 Regular Session of the Legislature, or as amended thereafter, and one of the following circumstances applies:

(1) The owner or operator was not authorized by the department before July 1, 1993, to conduct the eligible treatment or storage activity.

(2) The owner or operator did not pay a hazardous waste facility fee, as specified in Section 25205.2, for that year or reporting period prior to July 1, 1993, for the facility that is the subject of the standardized permit.

SEC. 9. Section 43152.16 is added to the Revenue and Taxation Code, to read:

43152.16. Costs assessed pursuant to paragraph (3) of subdivision (e) of Section 25205.7 of the Health and Safety Code are due and payable within 30 days after the date of assessment and the applicant for a standardized permit, as specified in Section 25201.6, shall deliver a remittance of the full amount of the assessed costs to the board within that 30-day period.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty

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

SEC. 11. If Senate Bill 922 of the 1993–94 Session of the Legislature is enacted and takes effect January 1, 1994, and amends Sections 25205.2, 25205.7, and 25205.12 of the Health and Safety Code, the amendments made by this act to Sections 25205.2, 25205.7, and 25205.12 of the Health and Safety Code shall remain operative only until the operative date of Senate Bill 922, at which time the amendments made by Senate Bill 922 to Sections 25205.2, 25205.7, and 25205.12 of the Health and Safety Code shall become operative, regardless of whether that act is enacted prior to, or subsequent to, this act.

SEC. 12. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide funding for carrying out the program administered by the Department of Toxic Substances Control under which standardized permits are issued to certain hazardous waste facilities, thereby better protecting public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 411

An act to amend Sections 25143.2, 25158.4, 25187.7, 25200.3, 25200.9, 25200.14, 25201.3, 25201.4, 25201.5, 25205.13, 25205.14, and 25245.5 of, to add Section 25110.9 to, and to repeal and add Section 25245.4 of, the Health and Safety Code, and to amend Section 43152.10 of, and to add Section 43152.11 to, the Revenue and Taxation Code, relating to hazardous waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1993. Filed with Secretary of State September 21, 1993.]

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

SECTION 1. Section 25110.9 is added to the Health and Safety Code, to read:

25110.9. (a) "Conditionally exempt small quantity treatment" means the operations of a generator conditionally exempted pursuant to subdivision (a) of Section 25201.5.

(b) "Conditionally exempt specified waste stream" means a waste stream treated by a generator conditionally exempted pursuant to subdivision (c) of Section 25201.5.

SEC. 2. Section 25143.2 of the Health and Safety Code is amended to read:

25143.2. (a) Recyclable materials are subject to the requirements of this chapter and the regulations adopted by the department to implement this chapter which apply to hazardous wastes, unless the department issues a variance pursuant to Section 25143, or except as provided otherwise in subdivision (b), (c), or (d) or the regulations adopted by the department pursuant to Sections 25150 and 25151. For the purposes of this section, recyclable material does not include infectious waste.

(b) Except as otherwise provided in subdivisions (e), (f), and (g), recyclable material which is managed in accordance with Section 25143.9 and is or will be recycled by any of the following methods shall be excluded from classification as a waste:

(1) Used or reused as an ingredient in an industrial process to make a product, if the material is not being reclaimed.

(2) Used or reused as a safe and effective substitute for commercial products, if the material is not being reclaimed.

(3) Returned to the original process from which the material was generated, without first being reclaimed, if the material is returned as a substitute for raw material feedstock, and the process uses raw materials as principal feedstocks.

(c) Except as otherwise provided in subdivision (e), any recyclable material may be recycled at a facility which is not authorized by the department pursuant to the applicable hazardous waste facilities permit requirements of Article 9 (commencing with Section 25200) if either of the following requirements is met:

(1) The material is a petroleum refinery waste containing oil which is converted into petroleum coke at the same facility at which the waste was generated, unless the resulting coke product would be identified as a hazardous waste under this chapter. A waste subject to this paragraph is exempt from this chapter to the same extent the waste is exempt from subsections (q), (r), and (s) of Section 6924 of Title 42 of the United States Code.

(2) The material meets all of the following conditions:

(A) The material is recycled and used at the same facility at which the material was generated.

(B) The material is recycled within 90 days of its generation.

(C) The material is managed in accordance with all applicable requirements for generators of hazardous wastes under this chapter and regulations adopted by the department.

(d) Except as otherwise provided in subdivisions (e), (f), (g), and (h), recyclable material which meets the definition of a non-RCRA hazardous waste in Section 25117.9, is managed in accordance with Section 25143.9, and meets or will meet any of the following requirements is excluded from classification as a waste:

(1) The material can be shown to be recycled and used at the site where the material was generated.

(2) The material qualifies as one or more of the following:

(A) The material is a product, which has been processed from a hazardous waste, or which has been handled, at a facility authorized by the department pursuant to the facility permit requirements of Article 9 (commencing with Section 25200) to process or handle the material, if the product meets both of the following conditions:

(i) The product does not contain constituents, other than those for which the material is being recycled which render the material hazardous under regulations adopted pursuant to Sections 25140 and 25141.

(ii) The product is used, or distributed or sold for use, in a manner for which the product is commonly used.

(B) The material is a petroleum refinery waste containing oil which is converted into petroleum coke at the same facility at which the waste was generated, unless the resulting coke product would be identified as a hazardous waste under this chapter.

(C) The material is oily waste, used oil, or spent nonhalogenated solvent which is managed by the owner or operator of a refinery which is processing primarily crude oil and which is not subject to permit requirements for recycling of used oil, or a public utility, or a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent of the refinery or public utility, and which meets all of the following requirements:

(i) The material is either burned in an industrial boiler, an industrial furnace, an incinerator, or a utility boiler which complies with all applicable federal and state laws, or is recombined with normal process streams to produce a fuel.

(ii) The material is managed at the site where it was generated; managed at another site owned or operated by the generator, a corporate subsidiary of the generator, a subsidiary of the same entity of which the generator is a subsidiary, or the corporate parent of the generator; or, if the material is generated in the course of oil or gas exploration or production, managed by an unrelated refinery receiving the waste through a common pipeline.

(iii) The material does not contain constituents other than those for which the material is being recycled which render the material hazardous under regulations adopted pursuant to Sections 25140 and 25141, unless the material is an oily waste, other than used oil, and those constituents are to be removed at the refinery prior to the use of the material.

(D) The material is a fuel which is removed from a fuel tank, is either contaminated with water or by nonhazardous debris, of not more than 2 percent by weight, including, but not limited to, rust or sand, or a fuel unintentionally mixed with an unused petroleum product, and is transferred to, and processed into a fuel at, a refinery which processes primarily crude oil.

(3) The material is transported between locations operated by the same person who generated the material, if the material is recycled at the last location operated by that person and all of the conditions of clauses (i) to (vi), inclusive, of subparagraph (A) of paragraph (4)

are met. If requested by the department or by any law enforcement official, a person handling material subject to this paragraph shall, within 15 days of the request, supply documentation to show that the requirements of this paragraph have been satisfied.

(4) (A) The material is transferred between locations operated by the same person who generated the material, if the material is to be recycled at an authorized offsite hazardous waste facility and if all of the following conditions are met:

(i) The material is transferred by employees of that person in vehicles under the control of that person or by a registered hazardous waste hauler under contract to that person.

(ii) The material is not handled at any interim location.

(iii) The material is not held at any publicly accessible interim location for more than four hours unless required by other provisions of law.

(iv) The material is managed in compliance with the requirements of this chapter and the regulations adopted pursuant to this chapter prior to the initial transportation of the material and after the receipt of the material at the last location operated by that person. Upon receipt of the material at the last location operated by that person, the material shall be deemed to have been generated at that location.

(v) All of the following information is maintained in an operating log at the last location operated by that person:

(I) The name and address of each generator location contributing material to each shipment received.

(II) The quantity and type of material contributed by each generator to each shipment of material.

(III) The destination and intended disposition of all material shipped offsite or received.

(IV) The date of each shipment received or sent offsite.

The log shall be kept for at least three years after receipt of the material at that location.

(vi) If requested by the department, or by any law enforcement official, a person handling material subject to this paragraph shall, within 15 days of the request, supply documentation to show that the requirements of this paragraph have been satisfied.

(B) For purposes of paragraph (3) and subparagraph (A) of paragraph (4), "person" also includes corporate subsidiary, corporate parent, or subsidiary of the same corporate parent.

(C) Persons which are a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent, and which manage recyclable materials under paragraph (3) or subparagraph (A) of paragraph (4), are jointly and severally liable for any activities excluded from regulation pursuant to this section.

(5) The material is used or reused as an ingredient in an industrial process to make a product, if the material is not being treated before introduction to that process except by one or more of the following procedures, and if any discharges to air from the following

procedures do not contain constituents which are hazardous wastes pursuant to the department's regulations and comply with applicable air pollution control laws:

(A) Filtering.

(B) Screening.

(C) Sorting.

(D) Sieving.

(E) Grinding.

(F) Physical or gravity separation, without the addition of external heat or any chemicals.

(G) pH adjustment.

(H) Viscosity adjustment.

(6) The material is used or reused as a safe and effective substitute for commercial products, if the material is not being treated except by one or more of the following procedures, and if any discharges to air from the following procedures do not contain constituents which are hazardous wastes pursuant to the department's regulations and comply with applicable air pollution control laws:

(A) Filtering.

(B) Screening.

(C) Sorting.

(D) Sieving.

(E) Grinding.

(F) Physical or gravity separation, without the addition of external heat or any chemicals.

(G) pH adjustment.

(H) Viscosity adjustment.

(7) The material is a chlorofluorocarbon or hydrochlorofluorocarbon compound or a combination of chlorofluorocarbon or hydrochlorofluorocarbon compounds, is being reused or recycled, and is used in heat transfer equipment, including, but not limited to, mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems, used in fire extinguishing products, or contained within foam products.

(e) Notwithstanding subdivisions (b), (c), and (d), all of the following recyclable materials are hazardous wastes and subject to full regulation under this chapter, even if the recycling involves use, reuse, or return to the original process as described in subdivision (b), or even if the recycling involves activities or materials described in subdivisions (c) and (d):

(1) Materials which are a RCRA hazardous waste, as defined in Section 25120.2, used in a manner constituting disposal, or used to produce products that are applied to the land including, but not limited to, materials used to produce a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance.

(2) Materials which are a non-RCRA hazardous waste, as defined in Section 25117.9, and used in a manner constituting disposal or used to produce products that are applied to the land as a fertilizer, soil

amendment, agricultural mineral, or an auxiliary soil and plant substance. The department may adopt regulations to exclude materials from regulation pursuant to this paragraph.

(3) Materials burned for energy recovery, used to produce a fuel, or contained in fuels, except materials exempted under paragraph (1) of subdivision (c) or excluded under subparagraph (B), (C), or (D) of paragraph (2) of subdivision (d).

(4) Materials accumulated speculatively.

(5) Materials determined to be inherently wastelike pursuant to regulations adopted by the department.

(6) Used or spent etchants, stripping solutions, and plating solutions, which are transported to an offsite facility operated by a person other than the generator and which are either of the following:

(A) The etchants or solutions are no longer fit for their originally purchased or manufactured purpose.

(B) If the etchants or solutions are reused, the generator and the user cannot document that they are used for their originally purchased or manufactured purpose without prior treatment.

(7) Used oil, as defined in subdivision (a) of Section 25250.1, unless one of the following applies:

(A) The used oil is excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d) or under paragraph (4) of subdivision (d) of this section, under subdivision (e) of Section 25250.1, or under Section 25250.3.

(B) The used oil is used or reused on the site where it was generated or is excluded under paragraph (3) of subdivision (d) of this section and, in either situation, is not any of the following:

(i) Used in a manner constituting disposal or used to produce a product that is applied to land.

(ii) Burned for energy recovery or used to produce a fuel, unless the used oil is excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

(iii) Accumulated speculatively.

(iv) Determined to be inherently wastelike pursuant to regulations adopted by the department.

(f) (1) Any person who manages a recyclable material under a claim that the material qualifies for exclusion or exemption pursuant to this section shall provide, upon request, to the department, the Environmental Protection Agency, or any local agency or official authorized to bring an action as provided in Section 25180, all of the following information:

(A) The name, street and mailing address, and telephone number of the owner or operator of any facility that manages the material.

(B) Any other information related to that person's management of the material requested by the department, the Environmental Protection Agency, or the authorized local agency or official.

(2) Any person claiming an exclusion or an exemption shall maintain adequate records to demonstrate to the satisfaction of the

requesting agency or official that there is a known market or disposition for the material, and that the requirements of any exemption or exclusion pursuant to this section are met.

(3) For purposes of determining that the conditions for exclusion from classification as a waste pursuant to this section are met, any person, facility, site, or vehicle engaged in the management of a material under a claim that the material is excluded from classification as a waste pursuant to this section shall be subject to Section 25185.

(g) For purposes of Chapter 6.8 (commencing with Section 25300), recyclable materials excluded from classification as a waste pursuant to this section are not excluded from the definition of hazardous substances in subdivision (g) of Section 25316.

(h) Used oil that fails to qualify for exclusion pursuant to subdivision (d) solely because the used oil is a RCRA hazardous waste, may be managed pursuant to subdivision (d) if the used oil is also managed in accordance with Part 260 (commencing with Section 260.1) to Part 270 (commencing with Section 270.1), inclusive, of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

SEC. 3. Section 25158.4 of the Health and Safety Code is amended to read:

25158.4. (a) The department shall adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code regulating the management of treatability samples and the conduct of treatability studies, in accordance with Sections 25158.2 and 25158.3, as those sections read on January 1, 1993. The adoption of these regulations is an emergency and the Office of Administrative Law shall consider the adoption of these regulations as necessary for the immediate preservation of the public peace, health and safety, and general welfare. The emergency regulations adopted pursuant to this section shall be repealed no more than 120 days after the regulations take effect.

(b) On or before the date the emergency regulations specified in subdivision (a) are repealed, the department shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code regulating the management of treatability samples and the conduct of treatability studies, in accordance with Sections 25158.2 and 25158.3, as those sections read on January 1, 1993.

SEC. 4. Section 25187.7 of the Health and Safety Code is amended to read:

25187.7. (a) The department may delegate some of the authority granted to the department in Sections 25187 and 25189.2 to a local health officer or a designated local public officer, but shall not delegate the authority specified in subdivision (f) of Section 25187, through a delegation agreement negotiated between the department and the governing body of the local health agency of the

local health officer or with the governing body of the local agency of the designated local public officer. The department may delegate authority to issue administrative orders for only the following:

(1) Orders for enforcement actions for class II violations, as defined in the regulations adopted by the department pursuant to this section, committed by generators, transporters, facilities deemed to hold a permit-by-rule pursuant to the regulations adopted by the department, generators conducting treatment pursuant to the regulations adopted by the department, generators conducting treatment conditionally authorized pursuant to Section 25200.3, and generators conducting treatment conditionally exempted pursuant to subdivision (a) or (c) of Section 25201.5.

(2) Orders for violations of this chapter or the regulations adopted to implement this chapter.

(b) The department shall provide ongoing coordination and regular evaluation of each participating local agency. Each local health officer or a designated local public officer operating under such a delegation agreement shall annually submit a report to the department on the status of orders issued under the authority of that delegation agreement. The report prepared by the local health officer or a designated local public officer shall contain, at least, the data necessary for the task force specified in subdivision (d) to prepare the reports specified in paragraph (2) of subdivision (d). The department shall adopt regulations defining the criteria for eligibility for a local health officer or a designated local public officer to receive a delegation of authority pursuant to this section and other procedures necessary to implement this section. The department may rescind the delegation of authority if the local health officer or a designated local public officer does not maintain eligibility for authorization under these regulations. The regulations shall include, but are not limited to, a requirement that the local health officer or a designated local public officer consult with the district attorney for the county on the development of policies to be followed by the local health officer or a designated local public officer in exercising the authority delegated pursuant to this section and the minimum training required for the staff of local health officers or designated local public officers participating in the pilot program established pursuant to this section. The regulations shall also include provisions to ensure that a person shall not be subject to an order issued by the department and by an authorized local health officer or a designated local public officer for the same act, violation, or failure to act. The regulations shall also include a requirement that the local agency have the ability to represent itself in administrative appeal hearings.

(c) The department may delegate authority pursuant to subdivision (a) to local health officers or designated local public officers in not more than eight counties, as part of a five-year pilot program.

(d) (1) On or before January 1, 1995, the department shall establish a task force consisting of two representatives from each of

the following groups:

(A) The regulated community affected by the delegation of authority made pursuant to this section.

(B) The department.

(C) Environmental organizations.

(D) Local jurisdictions.

(2) The task force shall evaluate the pilot program delegating authority to local health officers or designated local public officers pursuant to this section and shall prepare an initial report on or before July 1, 1995, that contains recommendations to the department and the Legislature regarding extending and expanding the pilot program established by this section. The task force shall also prepare a final report on the pilot program on or before September 1, 1996. At a minimum, the report shall consider any changes in the amount of time necessary to bring violators into compliance with this chapter, in the percent of identified violations addressed through formal enforcement actions, and in the total penalties assessed. The task force shall consider the pilot program to have met its objectives if there is a 10-percent reduction in the amount of time necessary to bring a violator into compliance with this chapter, and a 10-percent reduction in the number of repeat violations, as measured after the term of the pilot program.

(e) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 5. Section 25200.3 of the Health and Safety Code is amended to read:

25200.3. (a) Notwithstanding Section 25201, a generator who uses the following methods for treating RCRA or non-RCRA hazardous waste in tanks or containers, which is generated onsite, and which do not require a hazardous waste facility permit under the federal act, shall, for those activities, be deemed to be operating pursuant to a grant of conditional authorization without obtaining a hazardous waste facility permit or other grant of authorization and a generator is deemed to be granted conditional authorization upon notification to the department, as specified in subdivision (f) if the treatment complies with the applicable requirements of this section:

(1) The treatment of aqueous wastes which are hazardous solely due to the presence of inorganic constituents, except asbestos, listed in subparagraph (B) of paragraph (1) and subparagraph (A) of paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, and which contain not more than 1400 ppm total of these constituents, using the following treatment technologies:

(A) Phase separation, including precipitation, by filtration, centrifugation, or gravity settling, including the use of demulsifiers and flocculants in those processes.

(B) Ion exchange, including metallic replacement.

(C) Reverse osmosis.

(D) Adsorption.

(E) pH adjustment of aqueous waste with a pH of between 2.0 and 12.5.

(F) Electrowinning of solutions, if those solutions do not contain hydrochloric acid.

(G) Reduction of solutions which are hazardous solely due to the presence of hexavalent chromium, to trivalent chromium with sodium bisulfite, sodium metabisulfite, sodium thiosulfite, ferrous chloride, ferrous sulfate, ferrous sulfide, or sulfur dioxide, provided that the solution contains less than 750 ppm of hexavalent chromium.

(2) Treatment of aqueous wastes which are hazardous solely due to the presence of organic constituents listed in subparagraph (B) of paragraph (1), or subparagraph (B) of paragraph (2), of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and which contain not more than 750 ppm total of those constituents, using either of the following treatment technologies:

(A) Phase separation by filtration, centrifugation, or gravity settling, but excluding super critical fluid extraction.

(B) Adsorption.

(3) Treatment of wastes which are sludges resulting from wastewater treatment, solid metal objects, and metal workings which contain or are contaminated with, and are hazardous solely due to the presence of, constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, or treatment of wastes which are dusts which contain, or are contaminated with, and are hazardous solely due to the presence of, not more than 750 ppm total of those constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, using any of the following treatment technologies:

(A) Physical processes which constitute treatment only because they change the physical properties of the waste, such as filtration, centrifugation, gravity settling, grinding, shredding, crushing, or compacting.

(B) Drying to remove water.

(C) Separation based on differences in physical properties, such as size, magnetism, or density.

(4) Treatment of alum, gypsum, lime, sulfur, or phosphate sludges, using either of the following treatment technologies:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(5) Treatment of wastes listed in Section 66261.120 of Title 22 of the California Code of Regulations, which meet the criteria and requirements for special waste classification in Section 66261.122 of Title 22 of the California Code of Regulations, using any of the following treatment technologies, if the waste is hazardous solely due

to the presence of constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and the waste contains not more than 750 ppm total of those constituents:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(C) Screening to separate components based on size.

(D) Separation based on differences in physical properties, such as size, magnetism, or density.

(6) Treatment of wastes, except asbestos, which have been classified by the department as special wastes pursuant to Section 66261.24 of Title 22 of the California Code of Regulations, using any of the following treatment technologies, if the waste is hazardous solely due to the presence of constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and the waste contains not more than 750 ppm of those constituents:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(C) Magnetic separation.

(7) Treatment of soils which are hazardous solely due to the presence of metals listed in subparagraph (A) of paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, using either of the following treatment technologies:

(A) Screening to separate components based on size.

(B) Magnetic separation.

(8) Except as provided in Section 25201.5, treatment of oil mixed with water and oil/water separation sludges, using any of the following treatment technologies:

(A) Phase separation by filtration, centrifugation, or gravity settling, but excluding supercritical fluid extraction. This phase separation may include the use of demulsifiers and flocculants in those processes, even if the processes involve the application of heat, if the heat is applied in totally enclosed tanks and containers, and if it does not exceed 160 degrees Fahrenheit, or any lower temperature which may be set by the department.

(B) Separation based on differences in physical properties, such as size, magnetism, or density.

(C) Reverse osmosis.

(9) Neutralization of acidic or alkaline wastes that are hazardous only due to corrosivity, or toxicity that results only from the acidic or alkaline material, in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, if the waste contains less than 10 percent acid or base constituents by weight, and are treated in tanks or containers and piping,

constructed of materials compatible with the range of temperatures and pH levels, and subject to appropriate pH and temperature controls. If the waste contains more than 10 percent acid or base constituents by weight, the volume treated in a single batch at any one time shall not exceed 500 gallons.

(10) Processing of more than 500 gallons per month for disposal of effluent hazardous waste from the processing of silver halide-based imaging products, if the treatment also complies with the requirements of paragraph (7) of subdivision (c) of Section 25201.5, with the exception of the volume limit in subparagraph (D) of paragraph (7) of subdivision (c) of Section 25201.5.

(11) Treatment of spent cleaners and conditioners which are hazardous solely due to the presence of copper or copper compounds, subject to the following:

(A) The following requirements are met, in addition to all other requirements of this section:

(i) The waste stream does not contain more than 5000 ppm total copper.

(ii) The generator does not generate for treatment any more than 1000 gallons of the waste stream per month.

(iii) The treatment technologies employed are limited to those set forth in paragraph (1) for metallic wastes.

(iv) The generator keeps records documenting compliance with this subdivision, including records indicating the volume and concentration of wastes treated, and the management of related solutions which are not cleaners or conditioners.

(B) Cleaners and conditioners, for purposes of this paragraph, are solutions containing surfactants and detergents to remove dirt and foreign objects. Cleaners and conditioners do not include microetch, etchant, plating, or metal stripping solutions or solutions containing oxidizers, or any cleaner based on organic solvents.

(C) A grant of conditional authorization under this paragraph shall expire on January 1, 1995, unless extended by the department pursuant to this section.

(D) The department shall evaluate the treatment activities described in this paragraph and shall designate, by regulation, not later than January 1, 1995, those activities eligible for conditional authorization and those activities subject to permit-by-rule. In adopting regulations under this subparagraph, the department shall consider all of the following:

(i) The volume of waste being treated.

(ii) The concentration of the hazardous waste constituents.

(iii) The characteristics of the hazardous waste being treated.

(iv) The risks of the operation, and breakdown, of the treatment process.

(b) Any treatment performed pursuant to this section shall comply with all of the following:

(1) The total volume of hazardous waste treated in the unit in any calendar month shall not exceed 5,000 gallons or 45,000 pounds,

whichever is less, unless the waste is a dilute aqueous waste described in paragraph (1), (2), or (9) of subdivision (a) or oily wastes as described in paragraph (8) of subdivision (a). The department may by regulation impose volume limitations on wastes which have no limitations under this section, as may be necessary to protect human health and the environment.

(2) The treatment is conducted in tanks or containers.

(3) The treatment does not consist of the use of any of the following:

(A) Chemical additives, except for pH adjustment, chrome reduction, oil/water separation, and precipitation with the use of flocculants, as allowed by this section.

(B) Radiation.

(C) Electrical current except in the use of electrowinning, as allowed by this section, or in the processing of silver halide effluent pursuant to paragraph (10) of subdivision (a).

(D) Pressure, except for reverse osmosis, filtration, and crushing, as allowed by this section.

(E) Application of heat, except for drying to remove water or demulsification, as allowed by this section.

(4) All treatment residuals and effluents are managed and disposed of in accordance with applicable federal, state, and local requirements.

(5) The treatment process does not do either of the following:

(A) Result in the release of hazardous waste into the environment as a means of treatment or disposal.

(B) Result in the emission of volatile hazardous waste constituents or toxic air contaminants, unless the emission is in compliance with the rules and regulations of the local air pollution control or air quality management district.

(6) The generator unit complies with any additional requirements set forth in regulations adopted pursuant to this section.

(c) A generator or person owning or operating pursuant to subdivision (a) shall comply with all of the following requirements:

(1) Except as provided in paragraph (4), the generator shall comply with the standards applicable to generators specified in Chapter 12 (commencing with Section 66262.10) of Division 4.5 of Title 22 of the California Code of Regulations and with the applicable requirements in Sections 66265.12, 66265.14, and 66265.17 of Title 22 of the California Code of Regulations.

(2) The generator shall comply with Section 25202.9 by making an annual waste minimization certification.

(3) The generator shall comply with the environmental assessments procedures required pursuant to subdivisions (a) to (e), inclusive, of Section 25200.14. If that assessment reveals that there is contamination resulting from the release of hazardous waste or constituents from a solid waste management unit or a hazardous waste management unit at the generator's facility, regardless of the

time at which waste was released, the generator shall take every action necessary to expeditiously remediate that contamination, unless the generator provides documentation to the department and the local agency which demonstrates, to a degree of certainty which conforms to generally accepted professional standards, that the contamination does not present a substantial hazard to human health or the environment. If a facility is remediating the contamination pursuant to, and in compliance with the provisions of, an order issued by a California regional water quality control board or other state or federal environmental enforcement agency, that remediation shall be adequate for the purposes of complying with this section, as the remediation pertains to the jurisdiction of the ordering agency. This paragraph does not limit the department's authority pursuant to Section 25187 as may be necessary to protect human health or the environment.

(4) The generator unit shall comply with container and tank standards applicable to non-RCRA wastes, unless otherwise required by federal law, specified in subdivisions (a) and (b) of Section 66264.175 of Title 22 of the California Code of Regulations, as the standards apply to container storage and transfer activities, and to Article 9 (commencing with Section 66265.170) and Article 10 (commencing with Section 66265.190) of Chapter 15 of Division 4.5 of Title 22 of the California Code of Regulations, except for Section 66265.197 of Title 22 of the California Code of Regulations.

(A) Unless otherwise required by federal law, ancillary equipment for a tank or container treating hazardous wastes solely pursuant to this section, is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the ancillary equipment's integrity is attested to, pursuant to Section 66265.191 of Title 22 of the California Code of Regulations, every two years from the date that retrofitting requirements would otherwise apply.

(B) The Legislature hereby finds and declares that in the case of underground, gravity-pressured sewer systems, integrity testing is often not feasible. Therefore, on or before June 30, 1994, the department shall, by regulation, determine the best feasible leak detection measures which are sufficient to assure that underground gravity-pressured sewer systems, for which it is not feasible to conduct integrity testing, do not leak. After July 1, 1994, if it is not feasible for an operator's ancillary equipment, or a portion thereof, to undergo integrity testing, the operator is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the operator implements the best feasible leak detection measures which are determined to be sufficient by the department in those regulations, and those leak detection measures do not reveal any leaks emanating from the operator's ancillary equipment. Any ancillary equipment found to leak shall be retrofitted by the operator to meet the secondary containment standards of Section 66265.196 of Title 22 of the California Code of Regulations.

(5) The generator shall prepare and maintain a written inspection

schedule and a log of inspections conducted.

(6) The generator shall prepare and maintain written operating instructions and a record of the dates, concentrations, amounts, and types of waste treated. Records maintained to comply with the state, federal, or local programs may be used to satisfy this requirement, to the extent that those documents substantially comply with the requirements of this section. The operating instructions shall include, but not be limited to, directions regarding all of the following:

(A) How to operate the treatment unit and carry out waste treatment.

(B) How to recognize potential and actual process upsets and respond to them.

(C) When to implement the contingency plan.

(D) How to determine if the treatment has been efficacious.

(E) How to address the residuals of waste treatment.

(7) The generator shall maintain adequate records to demonstrate to the department that the requirements and conditions of this section are met, including compliance with all applicable pretreatment standards and with all applicable industrial waste discharge requirements issued by the agency operating the publicly owned treatment works into which the wastes are discharged. The records shall be maintained onsite for a period of five years.

(8) The generator shall treat only waste which is generated onsite. For purposes of this chapter, a residual material from the treatment of a hazardous waste generated offsite is not a waste that has been generated onsite.

(9) The generator shall submit a fee to the State Board of Equalization in the amount required by Section 25205.14. The generator shall submit that fee within 30 days of the date that the fee is assessed by the State Board of Equalization.

(10) Notwithstanding any other provision of law, the generator shall submit the fee required by Section 25205.14 for the 1993 reporting period to the department as part of, and at the same time as, the notification required pursuant to subdivision (f) that is due on April 1, 1993. Any notification not accompanied by payment of the fee is invalid and shall not result in a grant of conditional authorization.

(d) Notwithstanding any other provision of law, the following activities are ineligible for conditional authorization:

(1) Treatment in any of the following units:

(A) Landfills.

(B) Surface impoundments.

(C) Injection wells.

(D) Waste piles.

(E) Land treatment units.

(2) Commingling of hazardous waste with any hazardous waste that exceeds the concentration limits or pH limits specified in

subdivision (a), or diluting hazardous waste in order to meet the concentration limits or pH limits specified in subdivision (a).

(3) Treatment using a treatment process not specified in subdivision (a).

(4) Pretreatment or posttreatment activities not specified in subdivision (a).

(5) Treatment of any waste which is reactive or extremely hazardous.

(e) The department may, upon a petition being presented, adopt regulations which are not emergency regulations to consider granting a conditional authorization to a new treatment technology. An operator of a new technology which is granted a conditional authorization is subject to subdivisions (f), (g), (h), (i), (j), (k), and (*l*) pursuant to the requirements of paragraph (3) of subdivision (c). For the purposes of this subdivision, "new technology" means a hazardous waste treatment technology which, as it is applied to a specific waste stream, is not identified in this section or Section 25201.5 or in the department's regulations relating to permit-by-rule or hazardous waste facility permits. In order to conditionally authorize a new technology, the department shall find all of the following:

(1) The hazardous waste to be treated is defined by paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11) of subdivision (a).

(2) The new treatment technology complies with all of the conditions of subdivision (b).

(3) The generator complies with subdivision (c).

(4) The treatment technology does not violate paragraph (1), (2), or (5) of subdivision (d).

(5) The new treatment technology poses no greater risk to the public health and the environment than those technologies specifically made eligible for conditional authorization by this section.

(f) Any generator operating pursuant to a grant of conditional authorization under this section shall notify by certified mail, with return receipt requested, the department and the local health officer or other local public officer designated by the director pursuant to Section 25180 on or before April 1, 1993, or for a generator commencing the first treatment of hazardous waste pursuant to this section, not less than 60 days prior to commencing the first treatment of that waste pursuant to this section, whichever date is later. Each notification shall be completed, dated, and signed according to the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements that were in effect on January 1, 1992, and apply to hazardous waste facilities permit applications, shall be on a form prescribed by the department, and shall include, but not be limited to, all of the following information:

(1) The name, identification number, site address, mailing address, and telephone number of the generator to whom the

conditional authorization is granted.

(2) A description of the physical characteristics and chemical composition of the hazardous waste to which the conditional authorization applies.

(3) A description of the hazardous waste treatment activity to which the conditional authorization applies, including the basis for determining that a hazardous waste facility permit is not required under the federal act.

(4) A description of the characteristics and management of any treatment residuals.

(5) Documentation of any convictions, judgments, settlements, or orders resulting from an action by any local, state, or federal environmental or public health enforcement agency concerning the operation of the facility within the last three years, as the documents would be available under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of the Civil Code). For purposes of this paragraph, a notice of violation for any local, state, or federal agency does not constitute an order and a generator is not required to report the notice unless the violation is not corrected and the notice becomes a final order.

(g) Any generator operating pursuant to a grant of conditional authorization shall comply with all regulations adopted by the department relating to generators of hazardous waste.

(h) Upon terminating operation of any treatment process or unit conditionally authorized pursuant to this section, the generator conducting treatment pursuant to this section shall remove or decontaminate all waste residues, containment system components, soils, and other structures or equipment contaminated with hazardous waste from the unit. The removal of the unit from service shall be conducted in a manner that does both of the following:

(1) Minimizes the need for further maintenance.

(2) Eliminates the escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or waste decomposition products to the environment after the treatment process is no longer in operation.

Any generator conducting treatment pursuant to this section who permanently ceases operation of a treatment process or unit that is conditionally authorized pursuant to this section shall provide written notification to the department and to the local health officer or other local public officer designated by the director pursuant to Section 25180 upon completion of all activities required under this subdivision.

(i) In adopting regulations pursuant to this section, the department may impose any further restrictions or limitations consistent with the conditionally authorized status conferred by this section which are necessary to protect human health and the environment.

(j) The department may revoke any conditional authorization granted pursuant to this section. The department shall base a revocation on any one of the causes set forth in subdivision (a) of Section 66270.43 of Title 22 of the California Code of Regulations or in Section 25186, or upon a finding that operation of the facility in question will endanger human health, domestic livestock, wildlife, or the environment. The department shall conduct the revocation of a conditional authorization granted pursuant to this section in accordance with Chapter 21 (commencing with Section 66271.1) of Division 4.5 of Title 22 of the California Code of Regulations and as specified in Section 25186.7.

(k) A generator may contract with another party to provide onsite treatment pursuant to conditional authorization in accordance with this section. Any person who performs onsite treatment in a transportable treatment unit pursuant to this subdivision shall comply with the standards set forth in this chapter for the same treatment units treating the same waste streams and shall be subject to any additional requirements for transportable treatment units that are imposed by the department by regulations adopted pursuant to this section. The additional requirements may include, but shall not be limited to, a waste analysis plan, site-specific notification, financial assurances for third-party liability, operating standards, records retention, and time limits for the operation of the transportable treatment unit at a particular site.

(*l*) A generator shall submit an amended notification to the department and the local health officer or other local public officer designated by the director pursuant to Section 25180, in person, or by certified mail, with return receipt requested, on or before April 1, 1993, and within 30 days of any change in operation which necessitates modifying any of the information submitted in the notification required pursuant to subdivision (f). Each amended notification shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to hazardous waste facilities permit applications.

(m) A person who has submitted a notification to the department pursuant to subdivision (f) shall be deemed to be operating pursuant to this section, and shall be subject to the fee set forth in subdivision (a) of Section 25205.14 until that person submits to the department in person, or by certified mail, with return receipt requested, a certification that the generator has ceased all treatment activities of hazardous waste streams authorized pursuant to this section in accordance with the requirements of subdivision (h).

(n) The development and publication of the notification form specified in subdivision (f) is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the notification form.

SEC. 6. Section 25200.9 of the Health and Safety Code is amended to read:

25200.9. The department shall not grant interim status for any hazardous waste facility pursuant to Section 25200.5, unless either of the following applies:

(a) The hazardous waste management activities at the facility were not subject to the hazardous waste facilities permit requirements until on or after January 1, 1990, and the hazardous waste facility had been engaged in these activities before the date that the activities at the facility became subject to hazardous waste facility permit requirements.

(b) The hazardous waste management activities at the facility are eligible for the department's standardized permit application pursuant to Section 25201.6 and the hazardous waste facility was engaged, or authorized to engage, in those activities on September 1, 1992.

SEC. 7. Section 25200.14 of the Health and Safety Code is amended to read:

25200.14. (a) In implementing the requirements of Section 25200.10 for facilities operating pursuant to a permit-by-rule or generators operating pursuant to a grant of conditional authorization under Section 25200.3, the department shall require the owner or operator of the facility or generator operating pursuant to a grant of conditional authorization under Section 25200.3, to complete and file a phase I environmental assessment with the department within one year of the adoption of the checklist specified in subdivision (e), but on or before January 1, 1995. After submitting a phase I environmental assessment, the owner or operator of the facility or generator subject to this section shall subsequently submit to the department, during the next regular reporting period, if any, updated information obtained by the owner, operator, or generator concerning releases subsequent to the submission of the phase I environmental assessment.

(b) For purposes of this section, a phase I environmental assessment means a preliminary site assessment based on reasonably available knowledge of the facility, including, but not limited to, historical use of the property, prior releases, visual and other surveys, records, consultant reports, and regulatory agency correspondence. An assessment which would otherwise meet the requirements of this section which is prepared for another purpose and was completed no more than three years prior to the date by which the generator is required to submit a phase I environmental assessment may be used to comply with the requirements of this section, if the assessment is supplemented by any relevant updated information reasonably available to the owner, operator, or generator.

(c) The department shall not require sampling or testing as part of the phase I environmental assessment. A phase I environmental assessment shall be certified by the owner, operator, or their designee, certified professional engineer, geologist, or registered

environmental assessor. The phase I environmental assessment shall indicate whether the preparer believes that further investigation, including sampling and analysis, is necessary to determine whether a release has occurred, or to determine the extent of a release from a solid waste management unit or hazardous waste management unit.

(d) If the results of the phase I environmental assessment conducted pursuant to subdivision (a) indicate that further investigation is needed in order to determine the existence or extent of a release from a solid waste management unit or hazardous waste management unit, the facility shall submit a schedule, within 90 days of submission of the phase I environmental assessment to the department, for that further investigation to the department. If the department determines, based upon a review of the phase I environmental assessment or other site-specific information in its possession, that further investigation is needed to determine the existence or extent of a release from a solid waste management unit or hazardous waste management unit, in addition to any further action proposed by the owner or operator of the facility, or determines that a different schedule is necessary to prevent harm to human health and safety or to the environment, the department shall inform the owner or operator of the facility of this determination and shall set a reasonable time period in which to accomplish that further investigation. If a facility is conducting further investigation in order to determine the nature or extent of a release pursuant to, and in compliance with the provisions of, an order issued by a California regional water quality control board or other state or federal environmental enforcement agency, the department shall deem that investigation adequate for the purposes of determining the nature and extent of the release or releases which that order addressed, as the investigation pertains to the jurisdiction of the ordering agency.

(e) The department shall develop a checklist to be used by facilities in conducting a phase I environmental assessment. The development and publication of the checklist is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the checklist.

(f) A facility, or to the extent required by the regulations adopted by the department, a transportable treatment unit, operating pursuant to a permit-by-rule shall additionally comply with the remaining corrective action requirements, as specified in Section 67450.7 of Title 22 of the California Code of Regulations, as in effect on January 1, 1992.

(g) A generator operating pursuant to a grant of conditional authorization pursuant to Section 25200.3 shall additionally comply with the requirement of paragraph (3) of subdivision (c) of Section 25200.3.

SEC. 8. Section 25201.3 of the Health and Safety Code is amended to read:

25201.3. (a) A local agency shall not deem any of the following generators performing any of the following treatment activities to be a hazardous waste treatment facility for purposes of making a land use decision, and the department shall not require any of the following generators performing any of the following treatment activities to publish a notice regarding those activities:

(1) A facility operating pursuant to a permit-by-rule.

(2) A generator granted conditional authorization pursuant to Section 25200.3 for specified treatment activities.

(3) A generator performing treatment pursuant to subdivision (a) or (c) of Section 25201.5.

(b) For purposes of this section, "land use decision" means a discretionary decision of a local agency concerning a hazardous waste facility project, as defined in subdivision (b) of Section 25199.1, including the issuance of a land use permit or conditional use permit, the granting of a variance, the subdivision of property, and the modification of existing property lines pursuant to Title 7 (commencing with Section 65000) of the Government Code, and any local agency decision concerning a hazardous waste facility which is in existence and the enforcement of those decisions. This section does not limit or restrict the existing authority of a local agency to impose conditions on, or otherwise regulate, facilities or transportable treatment units operating pursuant to a permit-by-rule, generators or transportable treatment units conditionally authorized by Section 25200.3, or generators performing treatment under subdivision (a) or (c) of Section 25201.5.

SEC. 9. Section 25201.4 of the Health and Safety Code is amended to read:

25201.4. (a) The department shall establish a program in the jurisdictions which do not have a local hazardous waste generator inspection program to inspect generators pursuant to subdivision (b) for compliance with the requirements of Sections 25200.3 and 25201.5, and with the requirements concerning a permit-by-rule, including the regulations adopted by the department pursuant to those sections.

(b) (1) A local health officer or local public officer designated pursuant to Section 25180 may, as part of an existing hazardous waste generator inspection program, develop a local program to inspect facilities performing treatment pursuant to permit-by-rule, generators authorized pursuant to Section 25200.3, and generators authorized to perform treatment by subdivision (a) or (c) of Section 25201.5 for compliance with the requirements of applicable statutes and regulations.

(2) Any local program operating pursuant to this section shall be conducted in accordance with the standards adopted by the department pursuant to subdivision (c).

(3) Any local program operating pursuant to this section shall, at a minimum, be designed to ensure that within two years of the date that a person notifies the local agency that it is conducting treatment activities pursuant to permit-by-rule, or under Section 25200.3 or 25201.5, a site inspection shall be conducted at the facility, including verification of compliance with applicable generator requirements, container standards, and administrative and recordkeeping requirements, and that a compliance inspection shall be conducted at the facility to verify compliance with all applicable requirements every two years thereafter. Initial verification inspections which are conducted prior to the department's adoption of standards pursuant to subdivision (c) shall not be required to be conducted in accordance with those standards.

(4) The department's inspection program shall be designed to ensure that within two years of the date that a person notifies the department that it is conducting treatment activities pursuant to permit-by-rule, or Section 25200.3 or 25201.5, a site inspection shall be conducted at the facility, including verification of compliance with applicable generator requirements, container standards, administrative and recordkeeping requirements, and that a compliance inspection shall be conducted at the facility to verify compliance with all applicable requirements every two years thereafter. Initial verification inspections which are conducted prior to the department's adoption of standards pursuant to subdivision (c) shall not be required to be conducted in accordance with those standards.

(5) The local agencies operating a local program pursuant to this section may assess inspection fees to the persons conducting treatment under a grant of authorization pursuant to Section 25200.3, subdivisions (a) and (c) of Section 25201.5, and permit-by-rule, to cover the costs of the local program. In accordance with Section 43152.15 of the Revenue and Taxation Code, persons paying the inspection fees may offset up to 25 percent of the subsequent year's fees due the state pursuant to Section 25205.14.

(c) The department shall, upon consultation with local agencies, adopt regulations establishing standards which provide criteria for the implementation of a local inspection program to inspect facilities or transportable treatment units operating pursuant to permit-by-rule, generators conditionally authorized pursuant to Section 25200.3, and generators conditionally exempted pursuant to subdivision (a) or (c) of Section 25201.5. These standards shall include, but not be limited to, qualification standards, inspection and enforcement standards, and reporting criteria. The development and publication of these standards is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 10. Section 25201.5 of the Health and Safety Code is amended to read:

25201.5. (a) Notwithstanding any other provision of law, a

hazardous waste facility permit is not required for a generator who treats hazardous waste of a total weight of not more than 500 pounds, or a total volume of not more than 55 gallons, in any calendar month, if both of the following conditions are met:

(1) The hazardous waste is not an extremely hazardous waste and is listed in Section 67450.11 of Title 22 of the California Code of Regulations, as in effect on January 1, 1992, as eligible for treatment pursuant to the regulations adopted by the department for operation under a permit-by-rule and the treatment technology used is approved for that waste stream in Section 67450.11 of Title 22 of the California Code of Regulations for treatment under a permit-by-rule.

(2) The generator is not otherwise required to obtain a hazardous waste facility permit or other grant of authorization for any other hazardous waste management activity at the facility.

(b) Notwithstanding any other provision of law, treatment in the following units is ineligible for exemption pursuant to subdivision (a) or (c):

(1) Landfills.

(2) Surface impoundments.

(3) Injection wells.

(4) Waste piles.

(5) Land treatment units.

(6) Thermal destruction units.

(c) Notwithstanding any other provision of law, a hazardous waste facility permit or other grant of authorization is not required to conduct the following treatment activities, if the generator treats the following hazardous waste streams using the treatment technology required by this subdivision:

(1) The generator treats resins mixed in accordance with the manufacturer's instructions.

(2) The generator treats a container of 110 gallons or less capacity, which is not constructed of wood, paper, cardboard, fabric, or any other similar absorptive material, for the purposes of emptying the container as specified by Section 66261.7 of Title 22 of the California Code of Regulations, as revised July 1, 1990, or treats the inner liners removed from empty containers that once held hazardous waste or hazardous material. The generator shall treat the container or inner liner by using the following technologies, if the treated containers and rinseate are managed in compliance with the applicable requirements of this chapter:

(A) The generator rinses the container or inner liner with a suitable liquid capable of dissolving or removing the hazardous constituents which the container held.

(B) The generator uses physical processes, such as crushing, shredding, grinding, or puncturing, that change only the physical properties of the container or inner liner, if the container or inner liner is first rinsed as provided in subparagraph (A) and the rinseate is removed from the container or inner liner.

(3) The generator conducts drying by pressing or by passive or

heat-aided evaporation to remove water from wastes classified as special wastes by the department pursuant to Section 66261.124 of Title 22 of the California Code of Regulations.

(4) The generator conducts magnetic separation or screening to remove components from wastes classified as special wastes by the department pursuant to Section 66261.124 of Title 22 of the California Code of Regulations.

(5) The generator neutralizes wastes which are hazardous solely due to corrosivity or toxicity that results only from the acidic or alkaline material, in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, if the wastes result solely from the regeneration of ion exchange media used to demineralize water, do not contain more than 10 percent acid or base concentration by weight, and are treated in vessels and piping constructed of materials compatible with the range of temperatures and pH levels, and subject to appropriate pH and temperature controls.

(6) The generator neutralizes acidic wastes which are hazardous solely due to corrosivity resulting from the presence of food or food by-products, and alkaline or acidic waste, other than wastes containing nitric acid, at SIC Code Group 20, food and kindred product facilities, as defined in subdivision (p) of Section 25501, if both of the following conditions are met:

(A) The neutralization process does not result in the emission of volatile hazardous waste constituents or toxic air contaminants.

(B) The neutralization process is required in order to meet discharge or other regulatory requirements.

(7) The generator processes effluent hazardous waste for disposal from the processing of silver halide-based imaging products, if all of the following conditions are met:

(A) The effluent is a hazardous waste solely due to its silver content.

(B) The effluent is treated within 90 days of its generation.

(C) The effluent is treated in a tank or container.

(D) The total influent hazardous waste stream treated does not exceed 500 gallons in any calendar month.

(E) The effluent is treated with a technology or combination of technologies which recover the silver to a level less than 5 mg/l total silver in the final waste water discharge, or a lower level as may be set by the local publicly owned treatment works.

(8) Except as provided for specific waste streams in Section 25200.3, the generator conducts the separation by gravity of the following, if the activity is conducted in impervious tanks or containers constructed of noncorrosive materials, the activity does not involve the addition of heat or other form of treatment, or the addition of chemicals other than flocculants and demulsifiers, and the activity is managed in compliance with applicable requirements of federal, state, or local agency or treatment works:

(A) The settling of solids from waste where the resulting aqueous

stream is not hazardous.

(B) The separation of oil/water mixtures and separation sludges, if the average oil recovered per month is less than 25 barrels.

(9) The generator is a laboratory which is certified by the State Department of Health Services, or is a laboratory which is operated by an educational institution, which treats waste water which is generated onsite solely as a result of analytical testing, or which is a laboratory which treats less than one gallon of hazardous waste, which is generated onsite, in any single batch, subject to the following:

(A) The waste water treated is hazardous solely due to corrosivity or toxicity that results only from the acidic or alkaline material, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, or is excluded from the definition of hazardous waste by subparagraph (E) of paragraph (2) of subsection (a) of Section 66261.3 of Title 22 of the California Code of Regulations, or both.

(B) The treatment meets the following requirements, in addition to all other requirements of this section:

(i) The treatment complies with all applicable pretreatment requirements.

(ii) Neutralization occurs in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of Regulations; wastes to be neutralized do not contain any more than 10 percent acid or base concentration by weight, or any other concentration limit which may be imposed by the department; and vessels and piping for neutralization are constructed of materials compatible with the range of temperatures and pH levels, and subject to appropriate pH temperature controls.

(iii) Treatment does not result in the emission of volatile hazardous waste constituents or toxic air contaminants.

(10) The hazardous waste treatment is carried out in a quality control or quality assurance laboratory at a facility that is not an offsite hazardous waste facility and the treatment activity otherwise meet the requirements of paragraph (1) of subdivision (a).

(d) A generator conducting treatment pursuant to subdivision (a) or (c) shall meet all of the following conditions:

(1) The waste being treated is generated onsite, and a residual material from the treatment of a hazardous waste generated offsite is not a waste that has been generated onsite.

(2) The treatment does not require a hazardous waste facilities permit pursuant to the federal act.

(3) The generator prepares and maintains written operating instructions and a record of the dates, amounts, and types of waste treated.

(4) The generator prepares and maintains a written inspection schedule and log of inspections conducted.

(5) The records specified in paragraphs (3) and (4) are maintained onsite for a period of three years.

(6) The generator maintains adequate records to demonstrate

that it is in compliance with all applicable pretreatment standards and with all applicable industrial waste discharge requirements issued by the agency operating the publicly owned treatment works into which the wastes are discharged.

(7) (A) The generator submits a notification to the department and to the local health officer or other local public officer authorized to implement this chapter pursuant to Section 25180 on or before April 1, 1993, or if the generator is commencing the first treatment of waste pursuant to this section, not more than 60 days before commencing treatment of that waste pursuant to this section. The notification shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to permit applications, shall be on a form prescribed by the department, and shall include, but not be limited to, all of the following information:

(i) The name, identification number, site address, mailing address, and telephone number of the generator to whom the conditional exemption applies.

(ii) A description of the physical characteristics and chemical composition of the hazardous waste to which the conditional exemption applies.

(iii) A description of the hazardous waste treatment activity to which the conditional exemption applies, including, but not limited to, the basis for determining that a hazardous waste permit is not required under the federal act.

(iv) A description of the characteristics and management of any treatment residuals.

(B) The development and publication of the notification form specified in subparagraph (A) is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the notification form.

(C) Any notification submitted pursuant to this paragraph shall supercede any prior notice of intent submitted by the same generator in order to obtain a permit-by-rule under the regulations adopted by the department. This subparagraph does not require the department to refund any fees paid for any application in conjunction with the submission of a notice of intent for a permit-by-rule.

(8) (A) Upon terminating operation of any treatment process or unit exempted pursuant to this section, the generator who conducted the treatment shall remove or decontaminate all waste residues, containment system components, soils, and other structures or equipment contaminated with hazardous waste from the unit. The removal of the unit from services shall be conducted in a manner that does both of the following:

(1) Minimizes the need for further maintenance.

(2) Eliminates the escape of hazardous waste, hazardous

constituents, leachate, contaminated runoff, or waste decomposition products to the environment after treatment process is no longer in operation.

(B) Any owner or operator who permanently ceases operation of a treatment process or unit that is conditionally exempted pursuant to this section shall provide written notification to the department and to the local health officer or other local public officer designated by the director pursuant to Section 25180 upon completion of all activities required under this subdivision.

(9) The waste is managed in accordance with all applicable requirements for generators of hazardous waste under this chapter and the regulations adopted by the department pursuant to this chapter.

(10) The generator submits a fee in the amount required by Section 25205.14. The generator shall submit that fee within 30 days of the date that the fee is assessed by the State Board of Equalization, in the manner specified by Section 43152.10 of the Revenue and Taxation Code.

(11) Notwithstanding any other provision of law, the generator shall submit the fee required by Section 25205.14 for the 1993 reporting period to the department as part of, and at the same time as, the notification required pursuant to paragraph (7) of subdivision (d) that is due on April 1, 1993. Any notification not accompanied by payment of the fee is invalid and shall not result in a grant of conditional exemption.

(e) (1) Unless otherwise required by federal law, ancillary equipment for a tank or container treating hazardous wastes solely pursuant to this section, is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the ancillary equipment's integrity is attested to pursuant to Section 62265.191 of Title 22 of the California Code of Regulations every two years from the date that retrofitting requirements would otherwise apply.

(2) The Legislature hereby finds and declares that, in the case of underground, gravity-pressured sewer systems, integrity testing is often not feasible. Therefore, on or before June 30, 1994, the department shall, by regulation, determine the best feasible leak detection measures which are sufficient to ensure that underground gravity-pressured sewer systems, for which it is not feasible to conduct integrity testing, do not leak. On and after July 1, 1994, if it is not feasible for an operator's ancillary equipment, or a portion thereof, to undergo integrity testing, the operator is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the operator implements the best feasible leak detection measures that are determined to be sufficient by the department in those regulations, and those leak detection measures do not reveal any leaks emanating from the operator's ancillary equipment. Any ancillary equipment found to leak shall be retrofitted by the operator to meet the full secondary containment standards of Section 66265.196 of Title 22 of the California Code of Regulations.

(f) Nothing in this section shall abridge any authority granted to the department by any other provision of law to impose any further restrictions or limitations upon facilities subject to this section, that the department determines to be necessary to protect human health or the environment.

(g) A generator may contract with another party to provide onsite treatment in accordance with the permit exemption provisions of this section. Any person who performs onsite treatment in a transportable treatment unit pursuant to this subdivision shall comply with the standards set forth in this chapter for the same treatment units treating the same waste streams and shall be subject to any additional requirements for transportable treatment units that are imposed by the department by regulations adopted pursuant to this section. The additional requirements may include, but shall not be limited to, a waste analysis plan, site/specific notification, financial assurances for third-party liability, operating standards, records retention, and time limits for the operation of the transportable treatment unit at a particular site.

(h) A generator conducting activities which are exempt from this chapter pursuant to Section 66261.7 of Title 22 of the California Code of Regulations, as that section read on January 1, 1993, is not required to comply with this section.

SEC. 11. Section 25205.13 of the Health and Safety Code is amended to read:

25205.13. (a) Notwithstanding any other provision of law or regulation, for the 1993 reporting period, the deadline for submitting permit-by-rule fixed treatment unit facility-specific notifications and unit-specific notifications is April 1, 1993, or 60 days prior to commencing the first treatment of that waste, whichever date is later.

(b) The development and publication of the notification form for a fixed or transportable treatment unit operating pursuant to a permit-by-rule, as specified in subdivisions (a) and (b) of Section 67450.2 of Title 22 of the California Code of Regulations, is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the notification form.

(c) A facility or transportable treatment unit operating pursuant to a permit-by-rule shall provide the following information with the notifications required pursuant to subdivisions (a) and (b) of Section 67450.2 of Title 22 of the California Code of Regulations:

(1) The basis for determining that a hazardous waste facility permit is not required under the federal act.

(2) Documentation of any convictions, judgments, settlements, or orders resulting from an action by any local, state, or federal environmental or public health enforcement agency concerning the operation of the facility within the last three years, as the documents would be available under the California Public Records Act (Chapter

3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code or the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of the Civil Code.

(3) A waste minimization certificate, as specified in Section 25202.9.

(d) The facility or transportable treatment unit operating pursuant to a permit-by-rule shall treat only waste which is generated onsite.

SEC. 12. Section 25205.14 of the Health and Safety Code is amended to read:

25205.14. (a) The owner or operator of a facility or transportable treatment unit operating pursuant to a permit-by-rule shall pay a fee to the board per facility or transportable treatment unit for each reporting period, or portion thereof. The fee for the 1993 reporting period shall be one thousand one hundred forty dollars ($1,140). Thereafter, the fees shall be adjusted annually by the board to reflect increases and decreases in the cost-of-living, as measured by the United States Department of Labor or a successor agency. The owner or operator of a facility or transportable treatment unit operating pursuant to a permit-by-rule shall also pay a fee in the amount of 50 percent of the fee specified in this subdivision for each modification of the notification required by subdivision (f) of Section 25200.3. The reporting period shall begin January 1 of each calendar year. On or before January 31 of each calendar year, the department shall notify the board of all known owners or operators operating pursuant to a permit-by-rule. The department shall also notify the board of any owner or operator authorized to operate pursuant to a permit-by-rule within 60 days after being authorized.

(b) A generator operating under a grant of conditional authorization pursuant to Section 25200.3 shall pay a fee to the board per facility for each reporting period, or portion thereof. The fee for the 1993 reporting period shall be one thousand one hundred forty dollars ($1,140). Thereafter, the fees shall be adjusted annually by the board to reflect increases and decreases in the cost-of-living, as measured by the United States Department of Labor or a successor agency. A generator shall also pay a fee in the amount of 50 percent of the fee specified in this subdivision for each modification of the notification required by Sections 67450.2 and 67450.3 of Title 22 of the California Code of Regulations, as those sections read on January 1, 1993. The reporting period shall begin January 1 of each calendar year. On or before January 31 of each calendar year, the department shall notify the board of all known generators operating pursuant to a grant of conditional authorization under Section 25200.3. The department shall also notify the board of any generator authorized to operate under conditional authorization within 60 days of the receipt of notification.

(c) A generator performing treatment conditionally exempted pursuant to subdivision (a) or (c) of Section 25201.5 shall pay one

hundred dollars ($100) to the board per facility for the initial reporting period, or portion thereof, and fifty dollars ($50) every reporting period thereafter. The reporting period shall begin January 1 of each calendar year. On or before January 31 of each calendar year, the department shall notify the board of all known facilities performing treatment conditionally exempted by subdivision (a) or (c) of Section 25201.5. The department shall also notify the board of any generator who notifies the department that the generator is conducting a conditionally exempt treatment operation within 60 days of the receipt of the notification.

(d) The fees imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

(e) Notwithstanding subdivisions (a), (b), and (c), the fees for the 1993 reporting period for facilities operating permit-by-rule fixed treatment units or for generators conditionally authorized to operate pursuant to Section 25200.3 or performing treatment conditionally exempted pursuant to Section 25201.5 shall be remitted to the department at the time the notifications required by Sections 25200.3, 25201.5, and 25205.13 are submitted to the department.

SEC. 13. Section 25245.4 of the Health and Safety Code is repealed.

SEC. 14. Section 25245.4 is added to the Health and Safety Code, to read:

25245.4. (a) (1) On and before December 31, 1994, a facility or transportable treatment unit operating pursuant to a permit-by-rule is exempt from any standard or regulation adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245.

(2) On and after January 1, 1995, a facility or transportable treatment unit operating pursuant to a permit-by-rule shall provide financial assurances for third-party liability damages and the costs of closing the treatment units, as specified in the standards and regulations adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245, except that a facility operating pursuant to a permit-by-rule which operates not more than 30 days in any calendar year is not required to provide financial assurances for the costs of closure pursuant to paragraph (1) of subdivision (a) of Section 25245.

(3) A facility or transportable treatment unit operating pursuant to a permit-by-rule is not required to provide financial assurances for postclosure maintenance pursuant to paragraph (2) of subdivision (a) of Section 25245, unless the department determines, pursuant to the regulations adopted by the department, that the facility is required to obtain a postclosure permit.

(b) (1) Notwithstanding any other provision of law, except as provided in paragraph (2), on and before December 31, 1994, a conditionally authorized generator who treats waste pursuant to Section 25200.3 is exempt from any standard or regulation adopted

by the department pursuant to paragraph (1) of subdivision (a) of Section 25245.

(2) On and after January 1, 1995, a conditionally authorized generator who treats waste pursuant to Section 25200.3 shall provide financial assurances for the costs of closing the treatment units, as specified in the standards and regulations adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245, but shall not be required to provide financial assurance for third-party liability damages pursuant to paragraph (1) of subdivision (a) of Section 25245, or to provide financial assurances for postclosure maintenance pursuant to paragraph (2) of subdivision (a) of Section 25245, unless the department determines, pursuant to the regulations adopted by the department that the generator is required to obtain a postclosure permit.

(c) Notwithstanding any other provision of law, a generator who treats waste pursuant to subdivision (a) or (c) of Section 25201.5 is exempt, for those activities, from any standards or regulations adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245 and is not required to provide financial assurances for the costs of closing the treatment units or for damage claims arising out of the operations of the unit pursuant to paragraph (1) of subdivision (a) of Section 25245, or to provide financial assurances for postclosure maintenance pursuant to paragraph (2) of subdivision (a) of Section 25245, unless the department determines, pursuant to the regulations adopted by the department, that the generator is required to obtain a postclosure permit.

SEC. 15. Section 25245.5 of the Health and Safety Code is amended to read:

25245.5. On or before January 1, 1994, the department, in consultation with the Treasurer, the Department of Commerce, the Insurance Commissioner, and other appropriate public and private institutions, shall complete an assessment of the effectiveness, availability, and cost of alternative methods of securing financial assurances for the cost of closure and subsequent maintenance of a treatment unit subject to a permit-by-rule or conditional authorization. In conducting this assessment, the department shall evaluate methods of assurance which are not presently allowed by the department's regulations. The department shall, if it determines appropriate, revise its regulations, based upon the results of the assessment, as soon as practicable after the completion of the assessment.

SEC. 16. Section 43152.10 of the Revenue and Taxation Code is amended to read:

43152.10. The fees imposed pursuant to Sections 25205.7, 25205.8, 25205.14, 25221, and 25343 of the Health and Safety Code, which are collected and administered under Sections 43053 and 43054, are due and payable within 30 days after the date of assessment and the feepayer shall deliver a remittance of the amount of the assessed fee to the office of the board within that 30-day period, except as

provided in subdivision (e) of Section 25205.14 of the Health and Safety Code.

SEC. 17. Section 43152.11 is added to the Revenue and Taxation Code, to read:

43152.11. (a) The surcharge imposed pursuant to Section 25205.9 of the Health and Safety Code, which is collected and administered under Section 43055, is due and payable to the board on the last day of the month following the end of the calendar year.

(b) The surcharge shall be incorporated into the return form prescribed by the board, which every operator subject to the fee imposed by Section 25205.5 of the Health and Safety Code is required to file annually, in accordance with Section 43152.7. The surcharge shall be in addition to the fee imposed by Section 25205.5 of the Health and Safety Code.

(c) The surcharge imposed by Section 25205.9 of the Health and Safety Code shall be offset by any fees paid by the generator during the preceding calendar year for a local hazardous waste management program conducted by a local agency pursuant to a memorandum of understanding with the department. The offset provided for under this subdivision shall be allowed to the same extent as the offset provided in subdivision (c) of Section 43152.7.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 19. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide funding for the programs managing hazardous waste and cleaning up hazardous substances, thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 412

An act to amend Sections 25200.3, 25201.5, and 25244.5 of, and to add Section 25200.1.5 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 20, 1993. Filed with Secretary of State September 21, 1993.]

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

SECTION 1. Section 25200.1.5 is added to the Health and Safety Code, to read:

25200.1.5. (a) The department may establish an administrative process to certify hazardous waste environmental technologies that it determines will not pose a significant potential hazard to the public health and safety or to the environment if they are used under specified operating conditions and can be operated without specialized training and with minimal maintenance. Hazardous waste environmental technologies which may be certified shall include, but not are not limited to, hazardous waste management technologies, site mitigation technologies, and waste minimization and pollution prevention technologies. The certification process shall not be used for hazardous waste incineration technologies. The certification shall include all of the following:

(1) A statement of the technical specifications applicable to the technology.

(2) A determination of the composition of the hazardous wastes or chemical constituents for which the technology can appropriately be used.

(3) An estimate of the efficacy and efficiency of the technology in regard to the hazardous wastes or chemical constituents for which it is certified.

(4) A specification of the minimal operational standards the technology is required to meet to ensure that the certified technology is managed properly and used safely.

(b) An applicant for certification of a hazardous waste environmental technology shall provide the department with any information required by the department to make a determination on the application for certification.

(c) The department's proposed decision on an application for certification of a hazardous waste environmental technology shall be published in the California Regulatory Notice Register and shall be subject to a 30-day comment period. The department's final decision on an application for certification of a hazardous waste environmental technology shall become effective not sooner than 30 days after publication of the final decision in the California Regulatory Notice Register.

(d) The department may decertify a hazardous waste

environmental technology if it determines, on the basis of any information, that the hazardous waste environmental technology may pose a significant potential hazard to the public health and safety or to the environment. The department may decertify a hazardous waste environmental technology in accordance with the procedure set forth in subdivision (c).

(e) The department's decision on an application for certification under this section is exempt from the requirements of Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not be subject to the review and approval of the Office of Administrative Law.

(f) Based on the determination made by the department pursuant to subdivision (a), other local and state government permitting authorities may take this certification process into consideration when making their permitting decisions.

(g) (1) The department shall place appropriate conditions on any certification granted pursuant to this section. Those conditions may include, but are not limited to, all of the following:

(A) Limits on the types, volume, and concentration of waste streams that may be employed with the technology.

(B) Operating requirements.

(C) Monitoring requirements.

(2) Any technology certified by the department pursuant to this section may be eligible for authorization pursuant to permit-by-rule or conditional authorization pursuant to Section 25201.5, or conditional exemption pursuant to Section 25200.3, only if the department determines that the use of that technology to handle the waste stream or streams is demonstrated to be as safe and as effective as the processes that are subject to regulation pursuant to permit-by-rule or conditional authorization pursuant to Section 25201.5 or conditional exemption pursuant to Section 25200.3. A certified technology determined to be eligible for authorization pursuant to permit-by-rule shall, in addition to any conditions placed on the certification pursuant to paragraph (1), operate in accordance with all conditions of the certification and permit-by-rule.

(h) The department shall charge fees to review and certify environmental technologies pursuant to this section that are sufficient to recover the actual costs of the department in reviewing and approving the technology.

(i) The department shall implement a program to continually monitor and oversee manufacturers and users of technologies certified pursuant to this section, in order to ensure that the certified technologies are operating in a manner which is not hazardous to human health and safety or to the environment.

(j) The department shall adopt regulations to implement the certification process.

SEC. 2. Section 25200.3 of the Health and Safety Code is amended

to read:

25200.3. (a) Notwithstanding Section 25201, a generator who uses the following methods for treating RCRA or non-RCRA hazardous waste in tanks or containers, which is generated onsite, and which do not require a hazardous waste facility permit under the federal act, shall, for those activities, be deemed to be operating pursuant to a grant of conditional authorization without obtaining a hazardous waste facility permit or other grant of authorization and a generator is deemed to be granted conditional authorization upon notification to the department, as specified in subdivision (f) if the treatment complies with the applicable requirements of this section:

(1) The treatment of aqueous wastes which are hazardous solely due to the presence of inorganic constituents, except asbestos, listed in subparagraph (B) of paragraph (1) and subparagraph (A) of paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, and which contain not more than 1400 ppm total of these constituents, using the following treatment technologies:

(A) Phase separation, including precipitation, by filtration, centrifugation, or gravity settling, including the use of demulsifiers and flocculants in those processes.

(B) Ion exchange, including metallic replacement.

(C) Reverse osmosis.

(D) Adsorption.

(E) pH adjustment of aqueous waste with a pH of between 2.0 and 12.5.

(F) Electrowinning of solutions, if those solutions do not contain hydrochloric acid.

(G) Reduction of solutions which are hazardous solely due to the presence of hexavalent chromium, to trivalent chromium with sodium bisulfite, sodium metabisulfite, sodium thiosulfite, ferrous chloride, ferrous sulfate, ferrous sulfide, or sulfur dioxide, provided that the solution contains less than 750 ppm of hexavalent chromium.

(2) Treatment of aqueous wastes which are hazardous solely due to the presence of organic constituents listed in subparagraph (B) of paragraph (1), or subparagraph (B) of paragraph (2), of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and which contain not more than 750 ppm total of those constituents, using either of the following treatment technologies:

(A) Phase separation by filtration, centrifugation, or gravity settling, but excluding super critical fluid extraction.

(B) Adsorption.

(3) Treatment of wastes which are sludges resulting from wastewater treatment, solid metal objects, and metal workings which contain or are contaminated with, and are hazardous solely due to the presence of, constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, or treatment of wastes which are

dusts which contain, or are contaminated with, and are hazardous solely due to the presence of, not more than 750 ppm total of those constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, using any of the following treatment technologies:

(A) Physical processes which constitute treatment only because they change the physical properties of the waste, such as filtration, centrifugation, gravity settling, grinding, shredding, crushing, or compacting.

(B) Drying to remove water.

(C) Separation based on differences in physical properties, such as size, magnetism, or density.

(4) Treatment of alum, gypsum, lime, sulfur, or phosphate sludges, using either of the following treatment technologies:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(5) Treatment of wastes listed in Section 66261.120 of Title 22 of the California Code of Regulations, which meet the criteria and requirements for special waste classification in Section 66261.122 of Title 22 of the California Code of Regulations, using any of the following treatment technologies, if the waste is hazardous solely due to the presence of constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and the waste contains not more than 750 ppm total of those constituents:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(C) Screening to separate components based on size.

(D) Separation based on differences in physical properties, such as size, magnetism, or density.

(6) Treatment of wastes, except asbestos, which have been classified by the department as special wastes pursuant to Section 66261.24 of Title 22 of the California Code of Regulations, using any of the following treatment technologies, if the waste is hazardous solely due to the presence of constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and the waste contains not more than 750 ppm of those constituents:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(C) Magnetic separation.

(7) Treatment of soils which are hazardous solely due to the presence of metals listed in subparagraph (A) of paragraph (2) of

subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, using either of the following treatment technologies:

(A) Screening to separate components based on size.

(B) Magnetic separation.

(8) Except as provided in Section 25201.5, treatment of oil mixed with water and oil/water separation sludges, using any of the following treatment technologies:

(A) Phase separation by filtration, centrifugation, or gravity settling, but excluding supercritical fluid extraction. This phase separation may include the use of demulsifiers and flocculants in those processes, even if the processes involve the application of heat, if the heat is applied in totally enclosed tanks and containers, and if it does not exceed 160 degrees Fahrenheit, or any lower temperature which may be set by the department.

(B) Separation based on differences in physical properties, such as size, magnetism, or density.

(C) Reverse osmosis.

(9) Neutralization of acidic or alkaline wastes that are hazardous only due to corrosivity, or toxicity that results only from the acidic or alkaline material, in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, if the waste contains less than 10 percent acid or base constituents by weight, and are treated in tanks or containers and piping, constructed of materials compatible with the range of temperatures and pH levels, and subject to appropriate pH and temperature controls. If the waste contains more than 10 percent acid or base constituents by weight, the volume treated in a single batch at any one time shall not exceed 500 gallons.

(10) Processing of more than 500 gallons per month for disposal of effluent hazardous waste from the processing of silver halide-based imaging products, if the treatment also complies with the requirements of paragraph (7) of subdivision (c) of Section 25201.5, with the exception of the volume limit in subparagraph (D) of paragraph (7) of subdivision (c) of Section 25201.5.

(11) Treatment of spent cleaners and conditioners which are hazardous solely due to the presence of copper or copper compounds, subject to the following:

(A) The following requirements are met, in addition to all other requirements of this section:

(i) The waste stream does not contain more than 5000 ppm total copper.

(ii) The generator does not generate for treatment any more than 1000 gallons of the waste stream per month.

(iii) The treatment technologies employed are limited to those set forth in paragraph (1) for metallic wastes.

(iv) The generator keeps records documenting compliance with this subdivision, including records indicating the volume and concentration of wastes treated, and the management of related solutions which are not cleaners or conditioners.

(B) Cleaners and conditioners, for purposes of this paragraph, are solutions containing surfactants and detergents to remove dirt and foreign objects. Cleaners and conditioners do not include microetch, etchant, plating, or metal stripping solutions or solutions containing oxidizers, or any cleaner based on organic solvents.

(C) A grant of conditional authorization under this paragraph shall expire on January 1, 1995, unless extended by the department pursuant to this section.

(D) The department shall evaluate the treatment activities described in this paragraph and shall designate, by regulation, not later than January 1, 1995, those activities eligible for conditional authorization and those activities subject to permit-by-rule. In adopting regulations under this subparagraph, the department shall consider all of the following:

(i) The volume of waste being treated.

(ii) The concentration of the hazardous waste constituents.

(iii) The characteristics of the hazardous waste being treated.

(iv) The risks of the operation, and breakdown, of the treatment process.

(12) Any wastestream technology combination certified by the department, pursuant to Section 25200.1.5, as suitable for authorization pursuant to this section, that operates pursuant to the conditions imposed on that certification.

(b) Any treatment performed pursuant to this section shall comply with all of the following, except as to generators, who are treating hazardous waste pursuant to paragraph (12) of subdivision (a), who shall also comply with any additional conditions of the specified certification if those conditions are different from those set forth in this subdivision:

(1) The total volume of hazardous waste treated in the unit in any calendar month shall not exceed 5,000 gallons or 45,000 pounds, whichever is less, unless the waste is a dilute aqueous waste described in paragraph (1), (2), or (9) of subdivision (a) or oily wastes as described in paragraph (8) of subdivision (a). The department may by regulation impose volume limitations on wastes which have no limitations under this section, as may be necessary to protect human health and the environment.

(2) The treatment is conducted in tanks or containers.

(3) The treatment does not consist of the use of any of the following:

(A) Chemical additives, except for pH adjustment, chrome reduction, oil/water separation, and precipitation with the use of flocculants, as allowed by this section.

(B) Radiation.

(C) Electrical current except in the use of electrowinning, as allowed by this section, or in the processing of silver halide effluent pursuant to paragraph (10) of subdivision (a).

(D) Pressure, except for reverse osmosis, filtration, and crushing, as allowed by this section.

(E) Application of heat, except for drying to remove water or demulsification, as allowed by this section.

(4) All treatment residuals and effluents are managed and disposed of in accordance with applicable federal, state, and local requirements.

(5) The treatment process does not do either of the following:

(A) Result in the release of hazardous waste into the environment as a means of treatment or disposal.

(B) Result in the emission of volatile hazardous waste constituents or toxic air contaminants, unless the emission is in compliance with the rules and regulations of the local air pollution control or air quality management district.

(6) The generator unit complies with any additional requirements set forth in regulations adopted pursuant to this section.

(c) A generator or person owning or operating pursuant to subdivision (a) shall comply with all of the following requirements:

(1) Except as provided in paragraph (4), the generator shall comply with the standards applicable to generators specified in Chapter 12 (commencing with Section 66262.10) of Division 4.5 of Title 22 of the California Code of Regulations and with the applicable requirements in Sections 66265.12, 66265.14, and 66265.17 of Title 22 of the California Code of Regulations.

(2) The generator shall comply with Section 25202.9 by making an annual waste minimization certification.

(3) The generator shall comply with the environmental assessments procedures required pursuant to subdivisions (a) to (e), inclusive, of Section 25200.14. If that assessment reveals that there is contamination resulting from the release of hazardous waste or constituents from a solid waste management unit or a hazardous waste management unit at the generator's facility, regardless of the time at which waste was released, the generator shall take every action necessary to expeditiously remediate that contamination, unless the generator provides documentation to the department and the local agency which demonstrates, to a degree of certainty which conforms to generally accepted professional standards, that the contamination does not present a substantial hazard to human health or the environment. If a facility is remediating the contamination pursuant to, and in compliance with the provisions of, an order issued by a California regional water quality control board or other state or federal environmental enforcement agency, that remediation shall be adequate for the purposes of complying with this section, as the remediation pertains to the jurisdiction of the ordering agency. This paragraph does not limit the department's authority pursuant to Section 25187 as may be necessary to protect human health or the environment.

(4) The generator unit shall comply with container and tank standards applicable to non-RCRA wastes, unless otherwise required by federal law, specified in subdivisions (a) and (b) of Section

66264.175 of Title 22 of the California Code of Regulations, as the standards apply to container storage and transfer activities, and to Article 9 (commencing with Section 66265.170) and Article 10 (commencing with Section 66265.190) of Chapter 15 of Division 4.5 of Title 22 of the California Code of Regulations, except for Section 66265.197 of Title 22 of the California Code of Regulations.

(A) Unless otherwise required by federal law, ancillary equipment for a tank or container treating hazardous wastes solely pursuant to this section, is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the ancillary equipment's integrity is attested to, pursuant to Section 66265.191 of Title 22 of the California Code of Regulations, every two years from the date that retrofitting requirements would otherwise apply.

(B) The Legislature hereby finds and declares that in the case of underground, gravity-pressured sewer systems, integrity testing is often not feasible. Therefore, on or before June 30, 1994, the department shall, by regulation, determine the best feasible leak detection measures which are sufficient to assure that underground gravity-pressured sewer systems, for which it is not feasible to conduct integrity testing, do not leak. After July 1, 1994, if it is not feasible for an operator's ancillary equipment, or a portion thereof, to undergo integrity testing, the operator is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the operator implements the best feasible leak detection measures which are determined to be sufficient by the department in those regulations, and those leak detection measures do not reveal any leaks emanating from the operator's ancillary equipment. Any ancillary equipment found to leak shall be retrofitted by the operator to meet the secondary containment standards of Section 66265.196 of Title 22 of the California Code of Regulations.

(5) The generator shall prepare and maintain a written inspection schedule and a log of inspections conducted.

(6) The generator shall prepare and maintain written operating instructions and a record of the dates, concentrations, amounts, and types of waste treated. Records maintained to comply with the state, federal, or local programs may be used to satisfy this requirement, to the extent that those documents substantially comply with the requirements of this section. The operating instructions shall include, but not be limited to, directions regarding all of the following:

(A) How to operate the treatment unit and carry out waste treatment.

(B) How to recognize potential and actual process upsets and respond to them.

(C) When to implement the contingency plan.

(D) How to determine if the treatment has been efficacious.

(E) How to address the residuals of waste treatment.

(7) The generator shall maintain adequate records to demonstrate to the department that the requirements and

conditions of this section are met, including compliance with all applicable pretreatment standards and with all applicable industrial waste discharge requirements issued by the agency operating the publicly owned treatment works into which the wastes are discharged. The records shall be maintained onsite for a period of five years.

(8) The generator shall treat only waste which is generated onsite. For purposes of this chapter, a residual material from the treatment of a hazardous waste generated offsite is not a waste that has been generated onsite.

(9) The generator shall submit a fee to the State Board of Equalization in the amount required by Section 25205.14. The generator shall submit that fee within 30 days of the date that the fee is assessed by the State Board of Equalization.

(10) Notwithstanding any other provision of law, the generator shall submit the fee required by Section 25205.14 for the 1993 reporting period to the department as part of, and at the same time as, the notification required pursuant to subdivision (f) that is due on April 1, 1993. Any notification not accompanied by payment of the fee is invalid and shall not result in a grant of conditional authorization.

(d) Notwithstanding any other provision of law, the following activities are ineligible for conditional authorization:

(1) Treatment in any of the following units:

(A) Landfills.

(B) Surface impoundments.

(C) Injection wells.

(D) Waste piles.

(E) Land treatment units.

(2) Commingling of hazardous waste with any hazardous waste that exceeds the concentration limits or pH limits specified in subdivision (a), or diluting hazardous waste in order to meet the concentration limits or pH limits specified in subdivision (a).

(3) Treatment using a treatment process not specified in subdivision (a).

(4) Pretreatment or posttreatment activities not specified in subdivision (a).

(5) Treatment of any waste which is reactive or extremely hazardous.

(e) The department may, upon a petition being presented, adopt regulations which are not emergency regulations to consider granting a conditional authorization to a new treatment technology. An operator of a new technology which is granted a conditional authorization is subject to subdivisions (f), (g), (h), (i), (j), (k), and (*l*) pursuant to the requirements of paragraph (3) of subdivision (c). For the purposes of this subdivision, "new technology" means a hazardous waste treatment technology which, as it is applied to a specific waste stream, is not identified in this section or Section 25201.5 or in the department's regulations relating to permit-by-rule

or hazardous waste facility permits. In order to conditionally authorize a new technology, the department shall find all of the following:

(1) The hazardous waste to be treated is defined by paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11) of subdivision (a).

(2) The new treatment technology complies with all of the conditions of subdivision (b).

(3) The generator complies with subdivision (c).

(4) The treatment technology does not violate paragraph (1), (2), or (5) of subdivision (d).

(5) The new treatment technology poses no greater risk to the public health and the environment than those technologies specifically made eligible for conditional authorization by this section.

(f) Any generator operating pursuant to a grant of conditional authorization under this section shall notify by certified mail, with return receipt requested, the department and the local health officer or other local public officer designated by the director pursuant to Section 25180 on or before April 1, 1993, or for a generator commencing the first treatment of hazardous waste pursuant to this section, not less than 60 days prior to commencing the first treatment of that waste pursuant to this section, whichever date is later. Each notification shall be completed, dated, and signed according to the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements that were in effect on January 1, 1992, and apply to hazardous waste facilities permit applications, shall be on a form prescribed by the department, and shall include, but not be limited to, all of the following information:

(1) The name, identification number, site address, mailing address, and telephone number of the generator to whom the conditional authorization is granted.

(2) A description of the physical characteristics and chemical composition of the hazardous waste to which the conditional authorization applies.

(3) A description of the hazardous waste treatment activity to which the conditional authorization applies, including the basis for determining that a hazardous waste facility permit is not required under the federal act.

(4) A description of the characteristics and management of any treatment residuals.

(5) Documentation of any convictions, judgments, settlements, or orders resulting from an action by any local, state, or federal environmental or public health enforcement agency concerning the operation of the facility within the last three years, as the documents would be available under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of

the Civil Code). For purposes of this paragraph, a notice of violation for any local, state, or federal agency does not constitute an order and a generator is not required to report the notice unless the violation is not corrected and the notice becomes a final order.

(g) Any generator operating pursuant to a grant of conditional authorization shall comply with all regulations adopted by the department relating to generators of hazardous waste.

(h) Upon terminating operation of any treatment process or unit conditionally authorized pursuant to this section, the generator conducting treatment pursuant to this section shall remove or decontaminate all waste residues, containment system components, soils, and other structures or equipment contaminated with hazardous waste from the unit. The removal of the unit from service shall be conducted in a manner that does both of the following:

(i) Minimizes the need for further maintenance.

(ii) Eliminates the escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or waste decomposition products to the environment after the treatment process is no longer in operation.

Any generator conducting treatment pursuant to this section who permanently ceases operation of a treatment process or unit that is conditionally authorized pursuant to this section shall provide written notification to the department and to the local health officer or other local public officer designated by the director pursuant to Section 25180 upon completion of all activities required under this subdivision.

(i) In adopting regulations pursuant to this section, the department may impose any further restrictions or limitations consistent with the conditionally authorized status conferred by this section which are necessary to protect human health and the environment.

(j) The department may revoke any conditional authorization granted pursuant to this section. The department shall base a revocation on any one of the causes set forth in subdivision (a) of Section 66270.43 of Title 22 of the California Code of Regulations or in Section 25186, or upon a finding that operation of the facility in question will endanger human health, domestic livestock, wildlife, or the environment. The department shall conduct the revocation of a conditional authorization granted pursuant to this section in accordance with Chapter 21 (commencing with Section 66271.1) of Division 4.5 of Title 22 of the California Code of Regulations and as specified in Section 25186.7.

(k) A generator may contract with another party to provide onsite treatment pursuant to conditional authorization in accordance with this section. Any person who performs onsite treatment in a transportable treatment unit pursuant to this subdivision shall comply with the standards set forth in this chapter for the same treatment units treating the same waste streams and shall be subject to any additional requirements for transportable treatment units that

are imposed by the department by regulations adopted pursuant to this section. The additional requirements may include, but shall not be limited to, a waste analysis plan, site-specific notification, financial assurances for third-party liability, operating standards, records retention, and time limits for the operation of the transportable treatment unit at a particular site.

(*l*) A generator shall submit an amended notification to the department and the local health officer or other local public officer designated by the director pursuant to Section 25180, in person, or by certified mail, with return receipt requested, on or before April 1, 1993, and within 30 days of any change in operation which necessitates modifying any of the information submitted in the notification required pursuant to subdivision (f). Each amended notification shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to hazardous waste facilities permit applications.

(m) A person who has submitted a notification to the department pursuant to subdivision (f) shall be deemed to be operating pursuant to this section, and shall be subject to the fee set forth in subdivision (a) of Section 25205.14 until that person submits to the department in person, or by certified mail, with return receipt requested, a certification that the generator has ceased all treatment activities of hazardous waste streams authorized pursuant to this section in accordance with the requirements of subdivision (h).

(n) The development and publication of the notification form specified in subdivision (f) is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the notification form.

SEC. 3. Section 25201.5 of the Health and Safety Code is amended to read:

25201.5. (a) Notwithstanding any other provision of law, a hazardous waste facility permit is not required for a generator who treats hazardous waste of a total weight of not more than 500 pounds, or a total volume of not more than 55 gallons, in any calendar month, if both of the following conditions are met:

(1) The hazardous waste is not an extremely hazardous waste and is listed in Section 67450.11 of Title 22 of the California Code of Regulations, as in effect on January 1, 1992, as eligible for treatment pursuant to the regulations adopted by the department for operation under a permit-by-rule and the treatment technology used is approved for that waste stream in Section 67450.11 of Title 22 of the California Code of Regulations for treatment under a permit-by-rule.

(2) The generator is not otherwise required to obtain a hazardous waste facility permit or other grant of authorization for any other hazardous waste management activity at the facility.

(b) Notwithstanding any other provision of law, treatment in the

following units is ineligible for exemption pursuant to subdivision (a) or (c):

(1) Landfills.

(2) Surface impoundments.

(3) Injection wells.

(4) Waste piles.

(5) Land treatment units.

(6) Thermal destruction units.

(c) Notwithstanding any other provision of law, a hazardous waste facility permit or other grant of authorization is not required to conduct the following treatment activities, if the generator treats the following hazardous waste streams using the treatment technology required by this subdivision:

(1) The generator treats resins mixed in accordance with the manufacturer's instructions.

(2) The generator treats a container of 110 gallons or less capacity, which is not constructed of wood, paper, cardboard, fabric, or any other similar absorptive material, for the purposes of emptying the container as specified by Section 66261.7 of Title 22 of the California Code of Regulations, as revised July 1, 1990, or treats the inner liners removed from empty containers that once held hazardous waste or hazardous material. The generator shall treat the container or inner liner by using the following technologies, if the treated containers and rinseate are managed in compliance with the applicable requirements of this chapter:

(A) The generator rinses the container or inner liner with a suitable liquid capable of dissolving or removing the hazardous constituents which the container held.

(B) The generator uses physical processes, such as crushing, shredding, grinding, or puncturing, that change only the physical properties of the container or inner liner, if the container or inner liner is first rinsed as provided in subparagraph (A) and the rinseate is removed from the container or inner liner.

(3) The generator conducts drying by pressing or by passive or heat-aided evaporation to remove water from wastes classified as special wastes by the department pursuant to Section 66261.124 of Title 22 of the California Code of Regulations.

(4) The generator conducts magnetic separation or screening to remove components from wastes classified as special wastes by the department pursuant to Section 66261.124 of Title 22 of the California Code of Regulations.

(5) The generator neutralizes wastes which are hazardous solely due to corrosivity or toxicity that results only from the acidic or alkaline material, in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, if the wastes result solely from the regeneration of ion exchange media used to demineralize water, do not contain more than 10 percent acid or base concentration by weight, and are treated in vessels and piping constructed of materials compatible with the range of

temperatures and pH levels, and subject to appropriate pH and temperature controls.

(6) The generator neutralizes acidic wastes which are hazardous solely due to corrosivity resulting from the presence of food or food by-products, and alkaline or acidic waste, other than wastes containing nitric acid, at SIC Code Group 20, food and kindred product facilities, as defined in subdivision (p) of Section 25501, if both of the following conditions are met:

(A) The neutralization process does not result in the emission of volatile hazardous waste constituents or toxic air contaminants.

(B) The neutralization process is required in order to meet discharge or other regulatory requirements.

(7) The generator processes effluent hazardous waste for disposal from the processing of silver halide-based imaging products, if all of the following conditions are met:

(A) The effluent is a hazardous waste solely due to its silver content.

(B) The effluent is treated within 90 days of its generation.

(C) The effluent is treated in a tank or container.

(D) The total influent hazardous waste stream treated does not exceed 500 gallons in any calendar month.

(E) The effluent is treated with a technology or combination of technologies which recover the silver to a level less than 5 mg/l total silver in the final waste water discharge, or a lower level as may be set by the local publicly owned treatment works.

(8) Except as provided for specific waste streams in Section 25200.3, the generator conducts the separation by gravity of the following, if the activity is conducted in impervious tanks or containers constructed of noncorrosive materials, the activity does not involve the addition of heat or other form of treatment, or the addition of chemicals other than flocculants and demulsifiers, and the activity is managed in compliance with applicable requirements of federal, state, or local agency or treatment works:

(A) The settling of solids from waste where the resulting aqueous stream is not hazardous.

(B) The separation of oil/water mixtures and separation sludges, if the average oil recovered per month is less than 25 barrels.

(9) The generator is a laboratory which is certified by the State Department of Health Services, or is a laboratory which is operated by an educational institution, which treats waste water which is generated onsite solely as a result of analytical testing, or which is a laboratory which treats less than one gallon of hazardous waste, which is generated onsite, in any single batch, subject to the following:

(A) The waste water treated is hazardous solely due to corrosivity or toxicity that results only from the acidic or alkaline material, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, or is excluded from the definition of hazardous waste by subparagraph (E) of paragraph (2) of subsection (a) of Section

66261.3 of Title 22 of the California Code of Regulations, or both.

(B) The treatment meets the following requirements, in addition to all other requirements of this section:

(i) The treatment complies with all applicable pretreatment requirements.

(ii) Neutralization occurs in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of Regulations; wastes to be neutralized do not contain any more than 10 percent acid or base concentration by weight, or any other concentration limit which may be imposed by the department; and vessels and piping for neutralization are constructed of materials compatible with the range of temperatures and pH levels, and subject to appropriate pH temperature controls.

(iii) Treatment does not result in the emission of volatile hazardous waste constituents or toxic air contaminants.

(10) The hazardous waste treatment is carried out in a quality control or quality assurance laboratory at a facility that is not an offsite hazardous waste facility and the treatment activity otherwise meet the requirements of paragraph (1) of subdivision (a).

(11) Any wastestream technology combination certified by the department, pursuant to Section 25200.1.5, as suitable for authorization pursuant to this section, that operates pursuant to the conditions imposed on that certification.

(d) A generator conducting treatment pursuant to subdivision (a) or (c) shall meet all of the following conditions:

(1) The waste being treated is generated onsite, and a residual material from the treatment of a hazardous waste generated offsite is not a waste that has been generated onsite.

(2) The treatment does not require a hazardous waste facilities permit pursuant to the federal act.

(3) The generator prepares and maintains written operating instructions and a record of the dates, amounts, and types of waste treated.

(4) The generator prepares and maintains a written inspection schedule and log of inspections conducted.

(5) The records specified in paragraphs (3) and (4) are maintained onsite for a period of three years.

(6) The generator maintains adequate records to demonstrate that it is in compliance with all applicable pretreatment standards and with all applicable industrial waste discharge requirements issued by the agency operating the publicly owned treatment works into which the wastes are discharged.

(7) (A) The generator submits a notification to the department and to the local health officer or other local public officer authorized to implement this chapter pursuant to Section 25180 on or before April 1, 1993, or if the generator is commencing the first treatment of waste pursuant to this section, not more than 60 days before commencing treatment of that waste pursuant to this section. The notification shall be completed, dated, and signed in accordance with

the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to permit applications, shall be on a form prescribed by the department, and shall include, but not be limited to, all of the following information:

(i) The name, identification number, site address, mailing address, and telephone number of the generator to whom the conditional exemption applies.

(ii) A description of the physical characteristics and chemical composition of the hazardous waste to which the conditional exemption applies.

(iii) A description of the hazardous waste treatment activity to which the conditional exemption applies, including, but not limited to, the basis for determining that a hazardous waste permit is not required under the federal act.

(iv) A description of the characteristics and management of any treatment residuals.

(B) The development and publication of the notification form specified in subparagraph (A) is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the notification form.

(C) Any notification submitted pursuant to this paragraph shall supersede any prior notice of intent submitted by the same generator in order to obtain a permit-by-rule under the regulations adopted by the department. This subparagraph does not require the department to refund any fees paid for any application in conjunction with the submission of a notice of intent for a permit-by-rule.

(8) (A) Upon terminating operation of any treatment process or unit exempted pursuant to this section, the generator who conducted the treatment shall remove or decontaminate all waste residues, containment system components, soils, and other structures or equipment contaminated with hazardous waste from the unit. The removal of the unit from services shall be conducted in a manner that does both of the following:

(i) Minimizes the need for further maintenance.

(ii) Eliminates the escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or waste decomposition products to the environment after treatment process is no longer in operation.

(B) Any owner or operator who permanently ceases operation of a treatment process or unit that is conditionally exempted pursuant to this section shall provide written notification to the department and to the local health officer or other local public officer designated by the director pursuant to Section 25180 upon completion of all activities required under this subdivision.

(9) The waste is managed in accordance with all applicable requirements for generators of hazardous waste under this chapter

and the regulations adopted by the department pursuant to this chapter.

(10) The generator submits a fee in the amount required by Section 25205.14. The generator shall submit that fee within 30 days of the date that the fee is assessed by the State Board of Equalization, in the manner specified by Section 43152.10 of the Revenue and Taxation Code.

(11) Notwithstanding any other provision of law, the generator shall submit the fee required by Section 25205.14 for the 1993 reporting period to the department as part of, and at the same time as, the notification required pursuant to paragraph (7) of subdivision (d) that is due on April 1, 1993. Any notification not accompanied by payment of the fee is invalid and shall not result in a grant of conditional exemption.

(e) (1) Unless otherwise required by federal law, ancillary equipment for a tank or container treating hazardous wastes solely pursuant to this section, is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the ancillary equipment's integrity is attested to pursuant to Section 62265.191 of Title 22 of the California Code of Regulations every two years from the date that retrofitting requirements would otherwise apply.

(2) The Legislature hereby finds and declares that, in the case of underground, gravity-pressured sewer systems, integrity testing is often not feasible. Therefore, on or before June 30, 1994, the department shall, by regulation, determine the best feasible leak detection measures which are sufficient to ensure that underground gravity-pressured sewer systems, for which it is not feasible to conduct integrity testing, do not leak. On and after July 1, 1994, if it is not feasible for an operator's ancillary equipment, or a portion thereof, to undergo integrity testing, the operator is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the operator implements the best feasible leak detection measures that are determined to be sufficient by the department in those regulations, and those leak detection measures do not reveal any leaks emanating from the operator's ancillary equipment. Any ancillary equipment found to leak shall be retrofitted by the operator to meet the full secondary containment standards of Section 66265.196 of Title 22 of the California Code of Regulations.

(f) Nothing in this section shall abridge any authority granted to the department by any other provision of law to impose any further restrictions or limitations upon facilities subject to this section, that the department determines to be necessary to protect human health or the environment.

(g) A generator may contract with another party to provide onsite treatment in accordance with the permit exemption provisions of this section. Any person who performs onsite treatment in a transportable treatment unit pursuant to this subdivision shall comply with the standards set forth in this chapter for the same treatment units treating the same waste streams and shall be subject

to any additional requirements for transportable treatment units that are imposed by the department by regulations adopted pursuant to this section. The additional requirements may include, but shall not be limited to, a waste analysis plan, site/specific notification, financial assurances for third-party liability, operating standards, records retention, and time limits for the operation of the transportable treatment unit at a particular site.

(h) A generator conducting activities which are exempt from this chapter pursuant to Section 66261.7 of Title 22 of the California Code of Regulations, as that section read on January 1, 1993, is not required to comply with this section.

SEC. 4. Section 25244.5 of the Health and Safety Code is amended to read:

25244.5. (a) The department shall establish a Hazardous Waste Technology, Research, Development, and Demonstration Program, which shall consist of all of the following elements:

(1) Contracting with, and providing grants to, universities, governmental agencies, and private organizations for the research and development of hazardous waste reduction, recycling, or treatment technologies pursuant to Section 25244.10.

(2) Providing grants, under specified conditions, to cities, counties, and private organizations for the commercial demonstration of hazardous waste reduction, recycling, or treatment technologies pursuant to Section 25244.6.

(3) Providing grants to local governments for the development of local hazardous waste reduction programs which provide technical assistance, including hazardous waste audits, to generators pursuant to Section 25244.1101.

(b) (1) For purposes of this subdivision, "commercially successful technology" means a hazardous waste reduction, recycling, or treatment technology which is proven to be profitable, as determined by the department.

(2) The department shall require any university, governmental agency, or private organization which receives a grant pursuant to paragraph (1) or (2) of subdivision (a) to agree to repay the department for the amount of the grant, if the grant results in the development of a commercially successful technology, and to additionally pay the department a percentage of any royalties derived from that technology, as negotiated between the department and the grant recipient.

(3) The department shall deposit any repayments or royalties received by the department pursuant to this subdivision in the Hazardous Waste Control Account, and those funds may be expended by the department, upon appropriation by the Legislature, to carry out this article.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction,

changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 413

An act to amend Sections 17920, 17951, 18214, 18300, 18801, 19981, and 19993 of, and to add Section 50786.5 to, the Health and Safety Code, relating to housing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1993. Filed with Secretary of State September 21, 1993.]

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

SECTION 1. Section 17920 of the Health and Safety Code is amended to read:

17920. As used in this part:

(a) "Approved" means acceptable to the department.

(b) "Building" means a structure subject to this part.

(c) "Building standard" means building standard as defined in Section 18909.

(d) "Commission" means the Commission of Housing and Community Development. Any reference in this part to the commission or to the Commission of Housing and Community Development shall be subject to Section 17003.5.

(e) "Department" means the Department of Housing and Community Development.

(f) "Enforcement" means diligent effort to secure compliance, including review of plans and permit applications, response to complaints, citation of violations, and other legal process. Except as otherwise provided in this part, "enforcement" may, but need not, include inspections of existing buildings on which no complaint or permit application has been filed, and effort to secure compliance as to these existing buildings.

(g) "Fire protection district" means any special district, or any other municipal or public corporation or district, which is authorized by law to provide fire protection and prevention services.

(h) "Labeled" means equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization, approved by the department, that maintains a periodic inspection program of production of labeled products, installations, equipment, or materials and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in

a specified manner.

(i) "Listed" means all products that appear in a list published by an approved testing or listing agency.

(j) "Listing agency" means an agency approved by the department that is in the business of listing and labeling products, materials, equipment, and installations tested by an approved testing agency, and that maintains a periodic inspection program on current production of listed products, equipment, and installations, and that, at least annually, makes available a published report of these listings.

(k) "Noise insulation" means the protection of persons within buildings from excessive noise, however generated, originating within or without such buildings.

(*l*) "Nuisance" means any nuisance defined pursuant to Part 3 (commencing with Section 3479) of Division 4 of the Civil Code, or any other form of nuisance recognized at common law or in equity.

(m) "Public entity" has the same meaning as defined in Section 811.2 of the Government Code.

(n) "Testing agency" means an agency approved by the department as qualified and equipped for testing of products, materials, equipment, and installations in accordance with nationally recognized standards.

SEC. 2. Section 17951 of the Health and Safety Code is amended to read:

17951. (a) The governing body of any county or city, including a charter city, may prescribe fees for permits, certificates, or other forms or documents required or authorized by this part or rules and regulations promulgated pursuant thereto.

(b) The governing body of any county or city, including a charter city, or fire protection district, may prescribe fees to defray the costs of enforcement required by this part to be carried out by local enforcement agencies.

(c) The amount of the fees prescribed pursuant to subdivisions (a) and (b) of this section shall not exceed the amount reasonably required to administer or process these permits, certificates, or other forms or documents, or to defray the costs of enforcement required by this part to be carried out by local enforcement agencies, and shall not be levied for general revenue purposes. The fees shall be imposed pursuant to Section 66016 of the Government Code.

(d) (1) The provisions of this part are not intended to prevent the use of any manufactured home, mobilehome, material, appliance, installation, device, arrangement, or method of construction not specifically prescribed by the California Building Standards Code or this part, provided that this alternate has been approved.

(2) The building department of any city or county may approve an alternate if it finds that the proposed design is satisfactory and that the material, appliance, installation, device, arrangement, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in the California Building Standards Code or this

part in performance, safety, and for the protection of life and health.

(3) The building department of any city or county shall require evidence that any material, appliance, installation, device, arrangement, or method of construction conforms to, or that the proposed alternate is at least equivalent to, the requirements of this part, building standards published in the California Building Standards Code, or the other rules and regulations promulgated pursuant to this part and in order to substantiate claims for alternates, the building department of any city or county may require tests as proof of compliance to be made at the expense of the owner or the owner's agent by an approved testing agency selected by the owner or the owner's agent.

SEC. 2.5. Section 17951 of the Health and Safety Code is amended to read:

17951. (a) The governing body of any county or city, including a charter city, may prescribe fees for permits, certificates, or other forms or documents required or authorized by this part or rules and regulations promulgated pursuant thereto.

(b) The governing body of any county or city, including a charter city, or fire protection district, may prescribe fees to defray the costs of enforcement required by this part to be carried out by local enforcement agencies.

(c) The amount of the fees prescribed pursuant to subdivisions (a) and (b) of this section shall not exceed the amount reasonably required to administer or process those permits, certificates, or other forms or documents, or to defray the costs of enforcement required by this part to be carried out by local enforcement agencies, and shall not be levied for general revenue purposes. The costs of enforcement required by this part may be financed by fees imposed for inspections in order to investigate a complaint of a violation of a building, housing, health, or safety code, fees to inspect a dwelling unit to ensure the correction of a noticed violation, and fees for copies of reports and records related to the enforcement activity. The fees shall be imposed pursuant to Section 66016 of the Government Code. Any fee authorized by this section may be charged by the enforcement agency to the owner or operator of the property, or to the tenant or other complainant. However, the agency shall charge a tenant or other complainant only if the enforcement agency finds that the inspection request was frivolous, was brought in bad faith, or was for a tenant violation as defined in Section 1941.2 of the Civil Code. Whenever the local enforcement agency determines that the inspection request was frivolous, was brought in bad faith, or was for a tenant violation as defined in Section 1941.2 of the Civil Code, the agency shall impose any authorized fee on the tenant or complainant.

(d) (1) The provisions of this part are not intended to prevent the use of any manufactured home, mobilehome, material, appliance, installation, device, arrangement, or method of construction not specifically prescribed by the California Building

Standards Code or this part, provided that the alternate has been approved.

(2) The building department of any city or county may approve an alternate if it finds that the proposed design is satisfactory and that the material, appliance, installation, device, arrangement, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in the California Building Standards Code or this part in performance, safety, and for the protection of life and health.

(3) The building department of any city or county shall require evidence that any material, appliance, installation, device, arrangement, or method of construction conforms to, or that the proposed alternate is at least equivalent to, the requirements of this part, building standards published in the California Building Standards Code, or the other rules and regulations promulgated pursuant to this part and in order to substantiate claims for alternates, the building department of any city or county may require tests as proof of compliance to be made at the expense of the owner or the owner's agent by an approved testing agency selected by the owner or the owner's agent.

SEC. 3. Section 18214 of the Health and Safety Code is amended to read:

18214. (a) "Mobilehome park" is any area or tract of land where two or more mobilehome lots are rented or leased, held out for rent or lease, or were formerly held out for rent or lease and later converted to a subdivision, cooperative, condominium, or other form of resident ownership, to accommodate manufactured homes or mobilehomes used for human habitation. The rental paid for a manufactured home or mobilehome shall be deemed to include rental for the lot it occupies.

(b) Notwithstanding subdivision (a), an area or tract of land zoned for agricultural purposes where two or more mobilehome lots or spaces are rented or leased, held out for rent or lease, or provided as a term or condition of employment, to accommodate manufactured homes or mobilehomes used for the purpose of housing less than five agricultural employees shall not be deemed a mobilehome park.

(c) Notwithstanding subdivision (a), an area or tract of land shall not be deemed a mobilehome park if the structures on it consist of residential structures that are rented or leased, or held out for rent or lease, if those residential structures meet both of the following requirements:

(1) The residential structures are manufactured homes constructed pursuant to the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Secs. 5401 et seq.) or mobilehomes containing two or more dwelling units for human habitation.

(2) Those manufactured homes or mobilehomes have been approved by a city, county, or city and county pursuant to subdivision (d) of Section 17951 as an alternate which is at least the

equivalent to the requirements prescribed in the California Building Standards Code or Part 1.5 (commencing with Section 17910) in performance, safety, and for the protection of life and health.

SEC. 4. Section 18300 of the Health and Safety Code is amended to read:

18300. (a) This part applies to all parts of the state and supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to this part. Except as provided in Section 18930, the department may adopt regulations to interpret and make specific this part and, when adopted, the regulations shall apply to all parts of the state.

(b) Upon 30 days' written notice from the governing body to the department, any city, county, or city and county may assume the responsibility for the enforcement of this part and the regulations adopted pursuant to this part following approval by the department for the assumption.

(c) The department shall adopt regulations which set forth the conditions for assumption and may include required qualifications of local enforcement agencies. The conditions set forth and the qualifications required in the regulations which set forth the conditions for assumption shall relate solely to the ability of local agencies to enforce properly this part and the regulations adopted pursuant to this part. The regulations which set forth the conditions for assumption shall not set requirements for local agencies different than those which the state maintains for its own enforcement program. When assumption is approved, the department shall transfer the responsibility for enforcement to the city, county, or city and county, together with all records of parks within the jurisdiction of the city, county, or city and county.

(d) (1) In the event of nonenforcement of this part or the regulations adopted pursuant to this part by a city, county, or city and county, the department shall enforce this part and the regulations adopted pursuant to this part in the city, county, or city and county, after the department has given written notice to the governing body of the city, county, or city and county, setting forth in what respects the city, county, or city and county has failed to discharge its responsibility, and the city, county, or city and county has failed to initiate corrective measures to carry out its responsibility within 30 days of the notice.

(2) Where the department determines that the local enforcement agency is not properly enforcing this part, the local enforcement agency shall have the right to appeal the decision to the director of the department.

(e) Any city, city and county, or county, upon written notice from the governing body to the department, may cancel its assumption of responsibility for the enforcement of this part. The department, upon receipt of the notice, shall assume responsibility within 30 days.

(f) Every city, county, or city and county, within its jurisdiction, shall enforce this part and the regulations adopted pursuant to this

part, as they relate to manufactured homes, mobilehomes, or recreational vehicles and to accessory buildings or structures located in both of the following areas:

(1) Inside of parks while the city, county, or city and county has assumed responsibility for enforcement of this part.

(2) Outside of parks.

(g) This part shall not prevent local authorities of any city, county, or city and county, within the reasonable exercise of their police powers, from doing any of the following:

(1) From establishing, subject to the requirements of Sections 65852.3 and 65852.7 of the Government Code, certain zones for manufactured homes, mobilehomes, mobilehome parks, and special occupancy parks within the city, county, or city and county, or establishing types of uses and locations, including family mobilehome parks, senior mobilehome parks, mobilehome condominiums, mobilehome subdivisions, or mobilehome planned unit developments within the city, county, or city and county, as defined in the zoning ordinance, or from adopting rules and regulations by ordinance or resolution prescribing park perimeter walls or enclosures on public street frontage, signs, access, and vehicle parking or from prescribing the prohibition of certain uses for mobilehome parks or special occupancy parks.

(2) From regulating the construction and use of equipment and facilities located outside of a manufactured home, mobilehome, or recreational vehicle used to supply gas, water, or electricity thereto, except facilities owned, operated, and maintained by a public utility, or to dispose of sewage or other waste therefrom when the facilities are located outside a park for which a permit is required by this part or the regulations adopted pursuant thereto.

(3) From requiring a permit to use a manufactured home, mobilehome, or recreational vehicle outside a park for which a permit is required by this part or by regulations adopted pursuant thereto, and require a fee therefor by local ordinance commensurate with the cost of enforcing this part and local ordinance with reference to the use of manufactured homes, mobilehomes, and recreational vehicles, which permit may be refused or revoked if the use violates this part or Part 2 (commencing with Section 18000), any regulations adopted pursuant thereto, or any local ordinance applicable to that use.

(4) From requiring a local building permit to construct an accessory structure for a manufactured home or mobilehome when the manufactured home or mobilehome is located outside a mobilehome park, recreational vehicle park, or temporary recreational vehicle park, under circumstances which the provisions of this part or Part 2 (commencing with Section 18000) and the regulations adopted pursuant thereto do not require the issuance of a permit therefor by the department.

(5) From authorizing the creation, movement, shifting, or alteration of mobilehome park lot lines as specified in Section

18610.5.

(6) From prescribing and enforcing set-back and separation requirements governing the installation of a manufactured home, mobilehome, or mobilehome accessory structure or building installed outside of a mobilehome park or special occupancy park.

(h) (1) A city, including a charter city, county, or city and county, shall not require the average density in a new park to be less than that permitted by the applicable zoning ordinance, plus any density bonus, as defined in Section 65915 of the Government Code, for other affordable housing forms.

(2) A city, including a charter city, county, or city and county, shall not require a new park to include a clubhouse. Recreational facilities, recreational areas, accessory structures, or improvements may be required only to the extent that the facilities or improvements are required in other types of residential developments containing a like number of residential dwelling units.

(3) A city, including a charter city, county, or city and county, shall not require the set-back and separation requirements authorized by paragraph (6) of subdivision (g) to be greater than those permitted by applicable ordinances for other housing forms.

(i) The department may, at the department's sole option, enforce plan review activities associated with this part and the rules and regulations adopted thereunder through department-approved plan checking agencies. The department shall adopt regulations for approving and monitoring plan checking agencies, including, but not limited to, all of the following criteria:

(1) Freedom of any conflict of interest.

(2) Qualifications of personnel.

(3) A prohibition against collusive or fraudulent actions related to the performance of activities required by this part.

(4) Establishment of a schedule of fees to offset the department's cost of administering the approval and monitoring activities.

(5) Establishment of procedures for reimbursement to plan checking agencies for plan review services rendered.

(6) Establishment of a schedule of citations and administrative fines issued by the department upon finding a violation of this subdivision on the part of a plan checking agency.

(7) Any other conditions of operation the department may reasonably require.

(j) (1) The department may, by regulation, provide for the qualification of plan checking agencies to perform reviews of plans and specifications for the construction of mobilehome parks and to perform reviews of plans and specifications for the construction of additional buildings or lots, the alteration of buildings, lots, or other installations, in an existing mobilehome park, in areas in which the department is the enforcement agency. The regulations shall specify that all approved plan checking agencies shall employ at least one architect or engineer, licensed by the State of California, and that the architect or engineer shall be responsible for all plan review activity

specified in this part. Plans approved by department-approved agencies shall be deemed the equivalent of department approval of those plans.

(2) No agency approved to serve as a plan checking agency pursuant to this subdivision shall have a financial interest in any mobilehome park, with any owner, developer, or contractor of a mobilehome park, or in any entity used by the department for the purpose of performing oversight of the performance of plan checking agencies.

SEC. 5. Section 18801 of the Health and Safety Code is amended to read:

18801. (a) "Manufactured housing community," as used in this part and Part 2.1 (commencing with Section 18200), means any area or tract of land where two or more manufactured home lots are rented or leased, held out for rent or lease, or were formerly held out for rent or lease and later converted to a subdivision, cooperative, condominium, or other form of resident ownership, only to accommodate the use of manufactured homes constructed pursuant to the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Secs. 5401 et seq.) or mobilehomes containing two or more dwelling units for human habitation. The rental paid for a manufactured home shall be deemed to include rental for the lot it occupies.

(b) Notwithstanding subdivision (a), an area or tract of land zoned for agricultural purposes where two or more manufactured home lots are rented or leased, held out for rent or lease, or provided as a term or condition of employment to accommodate manufactured homes or mobilehomes used for the purpose of housing fewer than five agricultural employees, shall not be deemed a manufactured housing community.

(c) Notwithstanding subdivision (a), an area or tract of land shall not be deemed a mobilehome park if the structures on it consist of residential structures that are rented or leased, or held out for rent or lease, if those residential structures meet both of the following requirements:

(1) The residential structures are manufactured homes constructed pursuant to the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Secs. 5401 et seq.) or mobilehomes containing two or more dwelling units for human habitation.

(2) Those manufactured homes or mobilehomes have been approved by a city, county, or city and county pursuant to subdivision (d) of Section 17951 as an alternate which is at least the equivalent to the requirements prescribed in the California Building Standards Code or Part 1.5 (commencing with Section 17910) in performance, safety, and for the protection of life and health.

SEC. 6. Section 19981 of the Health and Safety Code is amended to read:

19981. (a) All factory-built housing bearing an insignia of

approval pursuant to Section 19980 shall be deemed to comply with the requirements of all ordinances or regulations enacted by any city, city and county, county, or district which may be applicable to the construction of housing. No city, city and county, county, or district shall require submittal of plans for any factory-built housing manufactured, or to be manufactured, pursuant to this part for the purpose of determining compliance with this part or the regulations promulgated thereunder, or for determining compliance with any local construction requirement, except as provided in Section 19993.

(b) No factory-built housing bearing a department insignia of approval pursuant to Section 19980 shall be in any way modified prior to installation unless approval is first obtained from the department.

(c) No factory-built housing shall be in any way modified during installation unless approval for the modification is first obtained from the local enforcement agency.

SEC. 7. Section 19993 of the Health and Safety Code is amended to read:

19993. (a) Local use zone requirements, local snow load requirements, local wind pressure requirements, local fire zones, building setback, side and rear yard requirements, site development and property line requirements, as well as the review and regulation of architectural and aesthetic requirements are hereby specifically and entirely reserved to local jurisdictions notwithstanding any requirement of this part.

(b) Local requirements imposed on factory-built housing pursuant to the authority granted by this section shall not vary substantially from the requirements imposed on other residential buildings of similar size.

SEC. 8. Section 50786.5 is added to the Health and Safety Code, to read:

50786.5. Notwithstanding any other provision of this chapter, where a city, county, or other local government entity has acquired a mobilehome park on or after January 1, 1989, and before January 1, 1993, for the purpose of converting the park to resident ownership, and the department has entered into a binding agreement for the commitment of funds to the project by January 1, 1993, the department shall not require that more than a simple majority of households residing in the park actually purchase, or have opened escrow to purchase, interests or spaces in the park as a condition of disbursement of funds for loans made pursuant to Section 50784 to qualified individual households.

SEC. 9. Section 2.5 of this bill incorporates amendments to Section 17951 of the Health and Safety Code proposed by both this bill and AB 1844. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 17951 of the Health and Safety Code, and (3) this bill is enacted after AB 1844, in which case Section 2 of this bill shall not become operative.

SEC. 10. Notwithstanding Section 17610 of the Government

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

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow the important reforms in housing law, relating to the State Housing Law, the Mobilehome Parks Act, the Manufactured Housing Community Act, and the Mobilehome Park Resident Ownership Program, made by this act to take effect as soon as possible during the 1993 calendar year, it is necessary that this act take effect immediately.

CHAPTER 414

An act to amend, repeal, and add Section 5074 of the Vehicle Code, relating to the Arts Council.

[Approved by Governor September 20, 1993. Filed with Secretary of State September 21, 1993.]

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

SECTION 1. Section 5074 of the Vehicle Code is amended to read:

5074. (a) This section shall be known and may be cited as the Polanco-Bates License Plates for the Arts Act of 1993. The California Arts Council shall participate in the special interest license plate program.

(b) In addition to the regular fees for an original registration or renewal of registration, the following additional fees shall be paid for the issuance or renewal of license plates bearing, notwithstanding Section 5060, a full-plate graphic design, depicting a significant feature or quality of the State of California, approved by the department in consultation with the California Arts Council:

(1) For the original issuance of the plates, twenty dollars ($20).

(2) For a renewal of registration of the plates, ten dollars ($10).

(3) In addition, for the issuance of an environmental license plate, as defined in Section 5103, with a full-plate graphic design, the

additional fees prescribed in Sections 5106 and 5108. The additional fees prescribed in Sections 5106 and 5108 shall be deposited in the Environmental License Plate Fund.

(c) Except as provided in paragraph (3) of subdivision (b), all fees collected under this section shall, after deduction of the department's costs in administering this section, be deposited in the Graphic Design License Plate Account in the General Fund, which is hereby created. The funds in the account shall be used by the California Arts Council, upon appropriation by the Legislature, for arts education and local arts programming.

(d) This section shall become inoperative on July 1, 1994, and, as of January 1, 1995, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1995, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 5074 is added to the Vehicle Code, to read:

5074. (a) This section shall be known and may be cited as the Polanco-Bates License Plates for the Arts Act of 1993. The California Arts Council shall participate in the special interest license plate program.

(b) In addition to the regular fees for an original registration or renewal of registration, the following additional fees shall be paid for the issuance or renewal of license plates bearing, notwithstanding Section 5060, a full-plate graphic design, depicting a significant feature or quality of the State of California, approved by the department in consultation with the California Arts Council:

(1) For the original issuance of the plates, thirty dollars ($30).

(2) For a renewal of registration of the plates, fifteen dollars ($15).

(3) In addition, for the issuance of an environmental license plate, as defined in Section 5103, with a full-plate graphic design, the additional fees prescribed in Sections 5106 and 5108. The additional fees prescribed in Sections 5106 and 5108 shall be deposited in the Environmental License Plate Fund.

(c) Except as provided in paragraph (3) of subdivision (b), all fees collected under this section shall, after deduction of the department's costs in administering this section, be deposited in the Graphic Design License Plate Account in the General Fund, which is hereby created. The funds in the account shall be used by the California Arts Council, upon appropriation by the Legislature, for arts education and local arts programming.

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

CHAPTER 415

An act to amend Sections 11240 and 11241 of, and to add Section 11242 to, the Water Code, relating to water.

[Approved by Governor September 20, 1993. Filed with Secretary of State September 21, 1993.]

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

SECTION 1. Section 11240 of the Water Code is amended to read:

11240. The unit designated as the Tehama-Colusa Canal consists of a conduit or canal, equipped with the necessary dams, pumping plants, groundwater recharge facilities, and other related works extending from the Sacramento River, at or near Red Bluff, southerly through the Counties of Tehama, Glenn, Colusa, Yolo, Solano, and Napa, and serving those counties.

SEC. 2. Section 11241 of the Water Code is amended to read:

11241. The Tehama-Colusa Canal shall have the capacity that the department, in cooperation with local public agencies in the service area, determines to be necessary to provide an adequate supply of water for industrial, agricultural, domestic, waterfowl refuge, wildlife, fisheries, and other beneficial uses in the area the canal serves.

SEC. 3. Section 11242 is added to the Water Code, to read:

11242. The water facilities authorized by Sections 11240 and 11241 may be constructed, owned, and operated by one or more local agencies, the department, or a joint powers authority created by agreement between those entities. Any joint powers authority may additionally include the federal Bureau of Reclamation.

CHAPTER 416

An act to amend Sections 10201, 10450.6, 10451.5, 10500, 10500.5, 10509, 10515, 10519, 10562, 10564, and 10580 of, to amend, repeal, and add Sections 10208.5, 10209.5, 10210, 10213.5, 10213.6, 10214.5, 10215, 10222, and 11011 of, to add Sections 10131.4, 10131.45, and 10133.35 to, and to repeal Sections 10507, 10518, 10566, and 10581 of, the Business and Professions Code, relating to real estate and making an appropriation therefor.

[Approved by Governor September 20, 1993. Filed with Secretary of State September 21, 1993.]

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

SECTION 1. Section 10131.4 is added to the Business and

Professions Code, to read:

10131.4. A real estate broker within the meaning of this part is also a person who acts for another or others for compensation or in expectation of compensation, to do one or more of the following acts:

(a) To sell or offer for sale, buy or offer to buy, solicit prospective sellers or purchasers, solicit or obtain listings, or negotiate the purchase, sale, or exchange of mineral, oil, or gas property.

(b) To solicit borrowers or lenders for or negotiate loans on mineral, oil, or gas property, or collect payments for lenders in connection with these loans.

(c) To lease or offer to lease or negotiate the sale, purchase, or exchange of leases on mineral, oil, or gas property.

(d) To rent or place for rent, mineral, oil, or gas property or to collect rent or royalties from mineral, oil, or gas property or improvements thereon.

(e) Other than as an officer or employee of the state or federal government, to assist or offer to assist another or others in filing an application for the purchase or lease of, or to locate or enter upon mineral, oil, or gas property owned by the state or federal government.

SEC. 2. Section 10131.45 is added to the Business and Professions Code, to read:

10131.45. A real estate broker within the meaning of this part is also a person who engages in the following businesses as a principal:

(a) Except as provided in subdivision (d) of Section 10133.35, buying or leasing, or taking an option on mineral, oil, or gas property for the purpose of sale, exchange, lease, sublease, or assignment of a lease of the property or any part of the property.

(b) Offering mining claims or any interest therein for sale or assignment.

SEC. 3. Section 10133.35 is added to the Business and Professions Code, to read:

10133.35. A real estate broker's license shall not be required to engage in any of the following activities with respect to a mineral, oil, or gas property:

(a) To act as a depository under an oil lease, gas lease, or oil and gas lease other than for purpose of sale.

(b) To engage in any transaction subject to an order of a court of competent jurisdiction.

(c) To engage in the business of drilling for or producing oil or gas or mining for or producing minerals.

(d) To negotiate leases or agreements between an owner of mineral, oil, or gas lands, leases, or mineral rights, and a person organized for or engaging in oil or gas or mineral or metal production, or to enter into leases or agreements with an owner of mineral, oil, or gas lands, leases, or mineral rights on behalf of a disclosed or undisclosed person organized for or engaging in oil or gas or mineral or metal production.

(e) To deal with mineral rights or land, other than oil or gas rights

or land, as the owner of the rights or land.

SEC. 4. Section 10201 of the Business and Professions Code is amended to read:

10201. The holder of a license who fails to renew it prior to the expiration of the period for which it was issued and who has otherwise qualified for such license, may renew it within two years from such expiration upon proper application and the payment of a late renewal fee in an amount equal to one and one-half times the regular renewal fee in effect at the time the license is reinstated.

SEC. 5. Section 10208.5 of the Business and Professions Code is amended to read:

10208.5. The real estate broker license examination fee is sixty dollars ($60). The real estate broker license reexamination fee is sixty dollars ($60).

If an applicant fails to appear for the examination within two years from the date of filing his or her application and fee for the examination, his or her application shall thereupon lapse and no further proceedings thereon shall be taken.

This section shall remain in effect until December 31, 1997, and as of that date is repealed, unless it is repealed on an earlier date pursuant to the provisions of Section 28 of the act that amends this section at the 1993 portion of 1993–94 Regular Session.

SEC. 5.5. Section 10208.5 is added to the Business and Professions Code, to read:

10208.5. The real estate broker license examination fee is fifty dollars ($50). The real estate broker license reexamination fee is fifty dollars ($50).

If an applicant fails to appear for the examination within two years from the date of filing his or her application and fee for the examination, his or her application shall thereupon lapse and no further proceedings thereon shall be taken.

This section shall become operative on January 1, 1998, unless it becomes operative on an earlier date pursuant to the provisions of Section 28 of the act that adds this section at the 1993 portion of the 1993–94 Regular Session.

SEC. 6. Section 10209.5 of the Business and Professions Code is amended to read:

10209.5. The fee for a restricted broker license shall not exceed two hundred fifteen dollars ($215).

This section shall remain in effect until December 31, 1997, and as of that date is repealed, unless it is repealed on an earlier date pursuant to the provisions of Section 28 of the act that amends this section at the 1993 portion of the 1993–94 Regular Session.

SEC. 6.5. Section 10209.5 is added to the Business and Professions Code, to read:

10209.5. The fee for a restricted broker license shall not exceed one hundred sixty-five dollars ($165).

This section shall become operative on January 1, 1998, unless it becomes operative on an earlier date pursuant to the provisions of

Section 28 of the act that adds this section at the 1993 portion of the 1993–94 Regular Session.

SEC. 7. Section 10210 of the Business and Professions Code is amended to read:

10210. The fee for a real estate broker license shall not exceed two hundred fifteen dollars ($215).

In the case of an original applicant, the fee is payable after the applicant is notified of passing the examination for license.

This section shall remain in effect until December 31, 1997, and as of that date is repealed, unless it is repealed on an earlier date pursuant to the provisions of Section 28 of the act that amends this section at the 1993 portion of the 1993–94 Regular Session.

SEC. 7.5. Section 10210 is added to the Business and Professions Code, to read:

10210. The fee for a real estate broker license shall not exceed one hundred sixty-five dollars ($165).

In the case of an original applicant, the fee is payable after the applicant is notified of passing the examination for license.

This section shall become operative on January 1, 1998, unless it becomes operative on an earlier date pursuant to the provisions of Section 28 of the act that adds this section at the 1993 portion of the 1993–94 Regular Session.

SEC. 8. Section 10213.5 of the Business and Professions Code is amended to read:

10213.5. The real estate salesperson license examination fee is thirty dollars ($30). The real estate salesperson license reexamination fee is thirty dollars ($30).

If an applicant fails to appear for the examination within two years from the date of filing his or her application and fee for the examination, his or her application shall thereupon lapse and no further proceedings thereon shall be taken.

This section shall remain in effect until December 31, 1997, and as of that date is repealed, unless it is repealed on an earlier date pursuant to the provisions of Section 28 of the act that amends this section at the 1993 portion of the 1993–94 Regular Session.

SEC. 8.5. Section 10213.5 is added to the Business and Professions Code, to read:

10213.5. The real estate salesperson license examination fee is twenty-five dollars ($25). The real estate salesperson license reexamination fee is twenty-five dollars ($25).

If an applicant fails to appear for the examination within two years from the date of filing his or her application and fee for the examination, his or her application shall thereupon lapse and no further proceedings thereon shall be taken.

This section shall become operative on January 1, 1998, unless it becomes operative on an earlier date pursuant to the provisions of Section 28 of the act that adds this section at the 1993 portion of the 1993–94 Regular Session.

SEC. 9. Section 10213.6 of the Business and Professions Code is

amended to read:

10213.6. If an applicant for any examination fails to take the examination on the date scheduled, he or she may make application in writing to the principal office of the department in Sacramento for a new date. A fee of twenty dollars ($20) shall accompany the written request for applying for the first new examination date in the case of a broker applicant, and a fee of fifteen dollars ($15) shall accompany the written request for the first new examination date in the case of a salesperson applicant. A fee of thirty dollars ($30) shall accompany the written request for all subsequent new examination dates for both broker and salesperson applicants.

This section shall remain in effect until December 31, 1997, and as of that date is repealed, unless it is repealed on an earlier date pursuant to the provisions of Section 28 of the act that amends this section at the 1993 portion of the 1993–94 Regular Session.

SEC. 9.5. Section 10213.6 is added to the Business and Professions Code, to read:

10213.6. If an applicant for any examination fails to take the examination on the date scheduled, he or she may make application in writing to the principal office of the department in Sacramento for a new date. A fee of fifteen dollars ($15) shall accompany the written request for applying for the first new examination date in the case of a broker applicant, and a fee of ten dollars ($10) shall accompany the written request for the first new examination date in the case of a salesperson applicant. A fee of twenty-five dollars ($25) shall accompany the written request for all subsequent new examination dates for both broker and salesperson applicants.

This section shall become operative on January 1, 1998, unless it becomes operative on an earlier date pursuant to the provisions of Section 28 of the act that adds this section at the 1993 portion of the 1993–94 Regular Session.

SEC. 10. Section 10214.5 of the Business and Professions Code is amended to read:

10214.5. The fee for a restricted salesperson license shall not exceed one hundred seventy dollars ($170), except that for an applicant qualifying pursuant to Section 10153.4 who has not satisfied all of the educational requirements prior to issuance of the license, the fee shall not exceed one hundred ninety-five dollars ($195).

This section shall remain in effect until December 31, 1997, and as of that date is repealed, unless it is repealed on an earlier date pursuant to the provisions of Section 28 of the act that amends this section at the 1993 portion of the 1993–94 Regular Session.

SEC. 10.5. Section 10214.5 is added to the Business and Professions Code, to read:

10214.5. The fee for a restricted salesperson license shall not exceed one hundred twenty dollars ($120).

This section shall become operative on January 1, 1998, unless it becomes operative on an earlier date pursuant to the provisions of Section 28 of the act that adds this section at the 1993 portion of the

1993–94 Regular Session.

SEC. 11. Section 10215 of the Business and Professions Code is amended to read:

10215. The fee for a real estate salesperson license shall not exceed one hundred seventy dollars ($170), except that for an applicant qualifying pursuant to Section 10153.4 who has not satisfied all of the educational requirements prior to issuance of the license, the fee shall not exceed one hundred ninety-five dollars ($195).

In the case of an original applicant, the fee is payable after the applicant is notified of passing the examination for license.

This section shall remain in effect until December 31, 1997, and as of that date is repealed, unless it is repealed on an earlier date pursuant to the provisions of Section 28 of the act that amends this section at the 1993 portion of the 1993–94 Regular Session.

SEC. 11.5. Section 10215 is added to the Business and Professions Code, to read:

10215. The fee for a real estate salesperson license shall not exceed one hundred twenty dollars ($120), except that for an applicant qualifying pursuant to Section 10153.4 who has not satisfied all of the educational requirements prior to issuance of the license, the fee shall not exceed one hundred forty-five dollars ($145).

In the case of an original applicant, the fee is payable after the applicant is notified of passing the examination for license.

This section shall become operative on January 1, 1998, unless it becomes operative on an earlier date pursuant to the provisions of Section 28 of the act that adds this section at the 1993 portion of the 1993–94 Regular Session.

SEC. 12. Section 10222 of the Business and Professions Code is amended to read:

10222. For any examination required under any order issued pursuant to the provisions of the Administrative Procedure Act, the fee is thirty dollars ($30) for salespersons and sixty dollars ($60) for brokers.

This section shall remain in effect until December 31, 1997, and as of that date is repealed, unless it is repealed on an earlier date pursuant to the provisions of Section 28 of the act that amends this section at the 1993 portion of the 1993–94 Regular Session.

SEC. 12.5. Section 10222 is added to the Business and Professions Code, to read:

10222. For any examination required under any order issued pursuant to the provisions of the Administrative Procedure Act, the fee is twenty-five dollars ($25) for salespersons and fifty dollars ($50) for brokers.

This section shall become operative on January 1, 1998, unless it becomes operative on an earlier date pursuant to the provisions of Section 28 of the act that adds this section at the 1993 portion of the 1993–94 Regular Session.

SEC. 13. Section 10450.6 of the Business and Professions Code is amended to read:

10450.6. There shall be separate accounts in the Real Estate Fund for purposes of real estate education and research and for purposes of recovery which shall be known respectively as the Education and Research Account and the Recovery Account. The commissioner may, by regulation, require that up to 8 percent, or such lesser amount as he or she deems appropriate, of the amount of any license fee collected under this part be credited to the Education and Research Account. Twelve percent of the amount of any license fee collected shall be credited to the Recovery Account, provided, however, that if as of June 30 of any fiscal year the balance of funds in the Recovery Account is at least $3,000,000, all funds in excess of this amount which have been credited to the Recovery Account shall instead be credited to the Real Estate Fund. As long as the balance of funds in the Recovery Account exceeds $3,000,000, all license fees collected, except for the percentage of license fees credited to the Education and Research Account, shall be credited to the Real Estate Fund. Funds in the Education and Research Account shall be used by the commissioner in accordance with Section 10451.5. The Recovery Account is a continuing appropriation for carrying out Chapter 6.5 (commencing with Section 10470).

SEC. 14. Section 10451.5 of the Business and Professions Code is amended to read:

10451.5. (a) All money paid into the State Treasury and credited to the Education and Research Account in the Real Estate Fund pursuant to Section 10450.6 is available for appropriation by the Legislature to be used by the commissioner in carrying out the provisions of this part and Chapter 1 (commencing with Section 11000) of Part 2, in the advancement of education and research in real estate at the University of California, state colleges and community colleges, or in contracting for a particular research project in the field of real estate for the state with any university in the State of California accredited by the Western Association of Schools and Colleges, or with any corporation or association qualified to perform such research.

(b) If the balance in the Education and Research Account is more than four hundred thousand dollars ($400,000), the Real Estate Commissioner may authorize the transfer of all or part of such surplus amount to the Real Estate Fund and may authorize the return to the Education and Research Account of all or part of any amount previously transferred to the Real Estate Fund.

(c) Notwithstanding the provisions of subdivision (b), if at any time the amount of funds credited to the Real Estate Fund, including any amounts credited to the separate accounts for Education and Research and Recovery, is less than 25 percent of the department's authorized expenditures for the following fiscal year, the commissioner may transfer any or all of the funds credited to the Education and Research Account to the Real Estate Fund. The commissioner may authorize the return to the Education and Research Account of all or part of any amount previously transferred

to the Real Estate Fund.

SEC. 15. Section 10500 of the Business and Professions Code is amended to read:

10500. Except as otherwise provided in Section 10131.4 and this chapter, it is unlawful for any person to engage in any of the following acts for another or others for compensation or in expectation of compensation, unless the person is licensed as a mineral, oil, and gas broker or a real estate broker:

(a) To sell or offer for sale, buy or offer to buy, solicit prospective sellers or purchasers, solicit or obtain listings, or negotiate the purchase, sale, or exchange of mineral, oil, or gas property.

(b) To solicit borrowers or lenders for or negotiate loans on mineral, oil, or gas property, or collect payments for lenders in connection with these loans.

(c) To lease or offer to lease or negotiate the sale, purchase, or exchange of leases on mineral, oil, or gas property.

(d) To rent or place for rent, mineral, oil, or gas property or to collect rent or royalties from mineral, oil, or gas property or improvements thereon.

(e) Other than as an officer or employee of the state or federal government, to assist or offer to assist another or others in filing an application for the purchase or lease of, or to locate or enter upon mineral, oil, or gas property owned by the state or federal government.

SEC. 16. Section 10500.5 of the Business and Professions Code is amended to read:

10500.5. Except as otherwise provided in Section 10131.45 and in this chapter, it is unlawful for any person to engage in the following businesses as a principal unless the person is licensed as a mineral, oil, and gas broker or a real estate broker:

(a) Except as provided in subdivision (d) of Section 10502, buying or leasing, or taking an option on mineral, oil, or gas property for the purpose of sale, exchange, lease, sublease, or assignment of a lease of the property or any part of the property.

(b) Offering mining claims or any interest therein for sale or assignment.

SEC. 17. Section 10507 of the Business and Professions Code is repealed.

SEC. 18. Section 10509 of the Business and Professions Code is amended to read:

10509. (a) It is unlawful for a mineral, oil, and gas broker or a real estate broker to employ or compensate, directly or indirectly, any person who is not a mineral, oil, and gas broker for performing any acts for which a mineral, oil, and gas broker license is required.

(b) It is a misdemeanor, punishable by a fine of not exceeding one hundred dollars ($100) for each offense, for any person, whether obligor, escrow holder or otherwise, to pay or deliver compensation to a person for performing any acts for which a mineral, oil, and gas broker license is required unless that person is known by the payer

to be or has presented evidence to the payer that he or she was a licensed mineral, oil, and gas broker at the time the compensation was earned.

SEC. 19. Section 10515 of the Business and Professions Code is amended to read:

10515. (a) Mineral, oil, and gas brokers in performing acts within the scope and under the authority of this chapter are subject to the provisions applicable to real estate brokers contained in Sections 10153.6, 10156.2, 10157, 10159, 10159.2, 10159.5, 10161.5, 10161.75, 10162, 10163, and 10165.

(b) Mineral, oil, and gas brokers shall not be subject to any of the provisions of Article 2 (commencing with Section 10150) or Article 2.5 (commencing with Section 10170) of Chapter 3 which impose continuing education requirements as a prerequisite to the renewal of a license.

SEC. 20. Section 10518 of the Business and Professions Code is repealed.

SEC. 21. Section 10519 of the Business and Professions Code is amended to read:

10519. (a) The commissioner may issue a restricted mineral, oil, and gas broker license to a person whose mineral, oil, and gas broker license has been revoked as the result of disciplinary action taken by the commissioner.

(b) A restricted mineral, oil, and gas broker license issued by the commissioner may be restricted by term and by the conditions to be observed by the licensee in the performance of acts for which a mineral, oil and gas broker license is required including the posting of a surety bond by the restricted licensee in such form and condition as the commissioner may require.

SEC. 22. Section 10562 of the Business and Professions Code is amended to read:

10562. The commissioner may suspend or revoke the license of any mineral, oil, and gas licensee who has done any of the following:

(a) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following such conviction, suspending the imposition of sentence, or of a subsequent order under the provision of Section 1203.4 of the Penal Code allowing such licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation or information.

(b) Knowingly authorized, directed, connived at or aided in the publication, advertisement, distribution, or circulation of any material false statement or representation concerning his or her business or any mineral, oil, or gas property offered for sale.

(c) Willfully disregarded or violated any of the provisions of the Real Estate Law (commencing with Section 10000) or of Chapter 1

(commencing with Section 11000) of Part 2 or of the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

(d) Acted or conducted himself or herself in a manner which would have warranted the denial of his or her application for a mineral, oil, and gas license.

(e) Willfully used the term "realtor" or any trade name or insigne of membership in any real estate organization of which the licensee is not a member.

(f) Demonstrated negligence or incompetence in performing any acts for which he or she is required to hold a license.

(g) Has used his or her employment by a governmental agency in a capacity giving access to records, other than public records, in such manner as to violate the confidential nature of the records.

(h) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

SEC. 23. Section 10564 of the Business and Professions Code is amended to read:

10564. The commissioner may suspend or revoke the mineral, oil, and gas license of a corporation as to any officer or agent acting under its mineral, oil, and gas license, without revoking the mineral, oil, and gas license of the corporation.

SEC. 24. Section 10566 of the Business and Professions Code is repealed.

SEC. 25. Section 10580 of the Business and Professions Code is amended to read:

10580. Mineral, oil, and gas brokers are subject to the provisions applicable to real estate brokers contained in Sections 10200, 10207, 10209.5, 10210, 10211, and 10222.

SEC. 26. Section 10581 of the Business and Professions Code is repealed.

SEC. 27. Section 11011 of the Business and Professions Code is amended to read:

11011. (a) The commissioner may by regulation prescribe filing fees in connection with applications to the Department of Real Estate pursuant to the provisions of this chapter which are lower than the maximum fees specified in subdivision (b) if the commissioner determines that the lower fees are sufficient to offset the costs and expenses incurred in the administration of this chapter. The commissioner shall hold at least one hearing each calendar year to determine if lower fees than those specified in subdivision (b) should be prescribed.

(b) The filing fee for an application for a public report to be issued under authority of this chapter shall not exceed the following for each subdivision or phase of a subdivision in which interests are to be offered for sale or lease:

(1) A notice of intention without a completed questionnaire: One

hundred fifty dollars ($150).

(2) An original public report for subdivision interests described in Section 11004.5: One thousand seven hundred dollars ($1,700) plus ten dollars ($10) for each subdivision interest to be offered.

(3) An original public report for subdivision interests other than those described in Section 11004.5: Six hundred dollars ($600) plus ten dollars ($10) for each subdivision interest to be offered.

(4) A conditional public report for subdivision interests described in Section 11004.5: Five hundred dollars ($500).

(5) A conditional public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars ($500).

(6) A preliminary public report for subdivision interests described in Section 11004.5: Five hundred dollars ($500).

(7) A preliminary public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars ($500).

(8) A renewal public report for subdivision interests described in Section 11004.5: Six hundred dollars ($600).

(9) A renewal public report for subdivision interests other than those described in Section 11004.5: Six hundred dollars ($600).

(10) An amended public report for subdivision interests described in Section 11004.5: Five hundred dollars ($500) plus ten dollars ($10) for each subdivision interest to be offered under the amended public report for which a fee has not previously been paid.

(11) An amended public report to offer subdivision interests other than those described in Section 11004.5: Five hundred dollars ($500) plus ten dollars ($10) for each subdivision interest to be offered under the amended public report for which a fee has not previously been paid.

(c) The actual subdivision fees established by regulation under authority of this section and Section 10249.3 shall not exceed the amount reasonably required by the department to administer the provisions of this part and the provisions of Article 8 (commencing with Section 10249) of Chapter 3 of Part 1.

(d) All fees collected by the department under authority of this chapter shall be deposited into the Real Estate Fund under Chapter 6 (commencing with Section 10450) of Part 1. All fees received by the department pursuant to the provisions of this chapter shall be deemed earned upon receipt. No part of any fee is refundable unless the commissioner determines that it was paid as the result of a mistake or inadvertence.

This section shall remain in effect until December 31, 1997, and as of that date is repealed, unless it is repealed on an earlier date pursuant to the provisions of Section 28 of the act that amends this section at the 1993 portion of the 1993–94 Regular Session.

SEC. 27.5. Section 11011 is added to the Business and Professions Code, to read:

11011. (a) The commissioner may by regulation prescribe filing fees in connection with applications to the Department of Real Estate pursuant to the provisions of this chapter which are lower

than the maximum fees specified in subdivision (b) if the commissioner determines that the lower fees are sufficient to offset the costs and expenses incurred in the administration of this chapter. The commissioner shall hold at least one hearing each calendar year to determine if lower fees than those specified in subdivision (b) should be prescribed.

(b) The filing fee for an application for a public report to be issued under authority of this chapter shall not exceed the following for each subdivision or phase of a subdivision in which interests are to be offered for sale or lease:

(1) A notice of intention without a completed questionnaire: One hundred fifty dollars ($150).

(2) An original public report for subdivision interests described in Section 11004.5: One thousand six hundred dollars ($1,600) plus ten dollars ($10) for each subdivision interest to be offered.

(3) An original public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars ($500) plus ten dollars ($10) for each subdivision interest to be offered.

(4) A conditional public report for subdivision interests described in Section 11004.5: Five hundred dollars ($500).

(5) A conditional public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars ($500).

(6) A preliminary public report for subdivision interests described in Section 11004.5: Five hundred dollars ($500).

(7) A preliminary public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars ($500).

(8) A renewal public report for subdivision interests described in Section 11004.5: Five hundred dollars ($500).

(9) A renewal public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars ($500).

(10) An amended public report for subdivision interests described in Section 11004.5: Three hundred dollars ($300) plus ten dollars ($10) for each subdivision interest to be offered under the amended public report for which a fee has not previously been paid.

(11) An amended public report to offer subdivision interests other than those described in Section 11004.5: Three hundred dollars ($300) plus ten dollars ($10) for each subdivision interest to be offered under the amended public report for which a fee has not previously been paid.

(c) The actual subdivision fees established by regulation under authority of this section and Section 10249.3 shall not exceed the amount reasonably required by the department to administer the provisions of this part and the provisions of Article 8 (commencing with Section 10249) of Chapter 3 of Part 1.

(d) All fees collected by the department under authority of this chapter shall be deposited into the Real Estate Fund under Chapter 6 (commencing with Section 10450) of Part 1. All fees received by the department pursuant to the provisions of this chapter shall be deemed earned upon receipt. No part of any fee is refundable unless

the commissioner determines that it was paid as the result of a mistake or inadvertence.

This section shall become operative on January 1, 1998, unless it becomes operative on an earlier date pursuant to the provisions of Section 28 of the act that adds this section at the 1993 portion of the 1993–94 Regular Session.

SEC. 28. The purpose of the fee increases proposed by this act is to recognize the cyclical nature of the real estate industry and the historic variations in income to the Department of Real Estate from examination fees, license fees, and public report application fees over extended periods of time due to changes in economic conditions in the state so that the department can continue to carry out its statutory responsibility to enforce the Real Estate Law under Chapter 1 (commencing with Section 10000) of Part 1 of Division 4 of the Business and Professions Code and the Subdivided Lands Law under Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of the Business and Professions Code in a manner which will not adversely reduce the level of protection for the purchasers of real property and those persons dealing with real estate licensees because of transfer of funds from the Real Estate Fund to the General Fund of the state.

The purpose of this act is also to recognize that if, as of June 30 of any fiscal year, the amount of funds in the Real Estate Fund is equal to 50 percent of the department's authorized budget for the following fiscal year, these funds will be presumptively sufficient to allow the commissioner to adequately enforce the provisions of the Real Estate Law and the Subdivided Lands Law in accordance with the standard set forth in Section 10050 of the Business and Professions Code, and as such the increase of fees provided for herein will not be necessary, and thereby enable the commissioner to lower fees to either the amount in effect as of the date of this act or to an amount to be determined by the commissioner as set forth below.

Finally, the purpose of the fee increases proposed by this act is to provide sufficient funds for the Real Estate Recovery Account so that the department can continue to timely pay valid claims filed for payment from the Recovery Account. As such, the integrity of license fees credited to the Recovery Account shall be observed and remain therein to ensure the ability of the department to carry out the provisions of Chapter 6.5 (commencing with Section 10470) of Part 1 of Division 4 of the Business and Professions Code.

Therefore, to effect the purpose of this act, if at any time during the 1994–95, 1995–96, 1996–97, or 1997–98 fiscal year any funds are transferred from the Real Estate Fund to the General Fund by the Budget Acts for those fiscal years, then the provisions of Sections 5, 6, 7, 8, 9, 10, 11, 12, and 27 of this act shall be repealed and of no force or effect 30 days from and after the date of the transfer of any funds, and Sections 5.5, 6.5, 7.5, 8.5, 9.5, 10.5, 11.5, 12.5, and 27.5 of this act shall become effective and operative and added to the Business and Professions Code 30 days from and after the date of the transfer,

irrespective of the operative dates set forth in Sections 5.5, 6.5, 7.5, 8.5, 9.5, 10.5, 11.5, 12.5, and 27.5.

Furthermore, if as of June 30 of the 1994-95, 1995-96, 1996-97, or 1997-98 fiscal year the balance of funds in the Real Estate Fund exceeds an amount equal to 50 percent of the department's authorized budget for the following year, then within 30 days thereafter the commissioner shall, notwithstanding the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), issue regulations reducing real estate license, examination, and subdivision application fees so that as of June 30 of the next fiscal year the balance of funds in the Real Estate Fund shall not exceed an amount equal to 50 percent of the department's authorized budget for that year. If the commissioner fails to reduce these fees within the timeframe specified in this paragraph, then Sections 5, 6, 7, 8, 9, 10, 11, 12, and 27 of this act shall be repealed and of no force and effect, and Sections 5.5, 6.5, 7.5, 8.5, 9.5, 10.5, 11.5, 12.5, and 27.5 shall become immediately effective and operative and added to the Business and Professions Code, irrespective of the operative dates set forth in those sections.

CHAPTER 417

An act to add Chapter 12.8 (commencing with Section 25968) to Division 20 of the Health and Safety Code, relating to condoms.

[Approved by Governor September 20, 1993. Filed with Secretary of State September 21, 1993.]

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

SECTION 1. Chapter 12.8 (commencing with Section 25968) of Division 20 is added to the Health and Safety Code, to read:

CHAPTER 12.8. CONDOM MANUFACTURERS

25968. (a) The State Department of Health Services shall annually obtain from the federal Food and Drug Administration any condom testing data, developed under Compliance Policy Guide 7124.21, which is publicly available.

(b) The state department shall make this information available pursuant to the provisions of the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code.

CHAPTER 418

An act to amend Section 15363.6 of the Government Code, and to amend Section 39661 of, to add Section 25204.6 to, to add Chapter 6.11 (commencing with Section 25404) to Division 20 of, and to add Division 37 (commencing with Section 57000) to, the Health and Safety Code, relating to environmental protection.

[Approved by Governor September 20, 1993. Filed with Secretary of State September 21, 1993.]

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

SECTION 1. Section 15363.6 of the Government Code is amended to read:

15363.6. The secretary shall have the following responsibilities:

(a) Coordinating the various trade, investment, and tourism activities of the California State World Trade Commission and the Department of Commerce to ensure that the resources that the state has invested in these programs are used effectively and efficiently and that they foster the state's reputation as a source of high quality, cost-effective goods and services including tourism destinations.

(b) Coordinating, on behalf of the Governor, the use of the overseas trade offices by any state export program not under the California State World Trade Commission, such as those that are operated by the Department of Food and Agriculture and the California Energy Commission, and by any state agency which may have occasion to need the services of the overseas trade offices in carrying out that agency's official duties and responsibilities.

(c) Reporting to the Governor and the Legislature on an annual basis about the policies, plans, budgeting, and accomplishments of the agency and its programs.

(d) In his or her capacity as a member of the Governor's cabinet, coordinating the development of a state policy on economic development and trade, and advising the Governor and members of the cabinet of the potential impacts of regulations on the state's business, economy, and job base. The initial policy and implementation strategy shall be included as a part of the secretary's first annual report to the Governor and the Legislature following enactment of this chapter. Each year thereafter, the secretary's annual report shall discuss economic development and trade policies including accomplishments and needed modifications.

(e) Evaluating, at his or her discretion, the findings and determinations required of any state agency which proposes to adopt regulations under Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1, including economic and cost impacts, reporting requirements, and alternatives analyses. The secretary shall, during the written comment period specified pursuant to paragraph (9) of subdivision (a) of Section 11346.5, submit written comments into the

record of the agency which proposes to adopt those regulations in those instances when the secretary determines that the contents of the notice of the proposed action or the supporting analysis and initial statement of reasons do not sufficiently support the findings and determinations of the agency. The secretary may, at his or her discretion, comment on other aspects of the proposed action that significantly impact the state's business, industry, economy, or job base, including the cumulative effects of the proposed action that significantly impact the state's business, industry, economy, or job base, including the cumulative impacts of the proposed action considered along with regulatory requirements in place at the federal, state, and local levels.

SEC. 2. Section 25204.6 is added to the Health and Safety Code, to read:

25204.6. (a) On or before January 1, 1995, the Secretary for Environmental Protection shall develop a hazardous waste facility regulation and permitting consolidation program, after holding an appropriate number of public hearings throughout the state. The program shall be developed in close consultation with the director and with the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, and with affected businesses and interested members of the public, including environmental organizations.

(b) The hazardous waste facility regulation and permitting consolidation program shall provide for all of the following:

(1) The grant to either the department or the State Water Resources Control Board and the California regional water quality control boards of sole authority to implement and enforce the requirements of Article 6 (commencing with Section 66264.90) of Chapter 14 of, and Article 6 (commencing with Section 66265.90) of Chapter 15 of, Division 4.5 of Title 22 of the California Code of Regulations and of Article 5 (commencing with Section 2530) of Chapter 15 of Division 3 of Title 23 of the California Code of Regulations.

(2) The development of a process for ensuring, at each facility which conducts offsite hazardous waste treatment, storage, or disposal activities, or which conducts onsite treatment, storage, or disposal activities which are required to receive a permit under the federal act, and which is required to clean up or abate the effects of a release of a hazardous substance pursuant to Section 13304 of the Water Code, or which is required to take corrective action for a release of hazardous waste or constituents pursuant to Section 25200.10, or both, that sole jurisdiction over the supervision of that action is vested in either the department or the State Water Resources Control Board and the California regional water quality control boards.

(3) The development of a unified hazardous waste facility permit, issued by the department, which incorporates all conditions, limitations, and requirements imposed by the State Water Resources

Control Board or the California regional water quality control boards to protect water quality, and incorporate all conditions, limitations, and requirements imposed by the department pursuant to this chapter.

(4) The development of a consolidated enforcement and inspection program designed to ensure effective, efficient, and coordinated enforcement of the laws implemented by the department, the State Water Resources Control Board, and the California regional water quality control boards, as those laws relate to facilities conducting offsite hazardous waste treatment, storage, or disposal activities, and to facilities conducting onsite treatment, storage, and disposal activities which are required to receive a permit under the federal act.

(c) The Secretary for Environmental Protection may immediately implement those aspects of the program which do not require statutory changes. If the Secretary for Environmental Protection determines that statutory changes are needed to fully implement the program, the secretary shall recommend these changes to the Legislature on or before January 1, 1995. It is the intent of the Legislature that the program be fully implemented not later than January 1, 1996.

(d) The Secretary for Environmental Protection shall work in close consultation with the Environmental Protection Agency, and shall implement this section only to the extent that doing so will not result in this state losing its authorization to implement the federal act, or its delegation to implement the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).

SEC. 3. Chapter 6.11 (commencing with Section 25404) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 6.11. UNIFIED HAZARDOUS WASTE AND HAZARDOUS MATERIALS MANAGEMENT REGULATORY PROGRAM

25404. (a) For purposes of this chapter, "secretary" means the Secretary for Environmental Protection.

(b) On or before January 1, 1996, the secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of

the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) The requirements adopted by the department pursuant to Chapter 6.5 (commencing with Section 25100) applicable to hazardous waste generators, hazardous waste generators conducting treatment conditionally authorized pursuant to Section 25200.3, hazardous waste generators conducting treatment exempted pursuant to Section 25201.5, and facilities deemed to hold a permit-by-rule pursuant to the regulations adopted by the department, except for the corrective action and phase I environmental assessment requirements of Sections 25200.10 and 25200.14. A certified unified program agency may enforce the requirements of Sections 25200.10 and 25200.14 pursuant to regulations adopted by the secretary.

(2) The requirement of subdivision (c) of Section 25270.5 for owners and operators of aboveground storage tanks to prepare a spill prevention control and countermeasure plan.

(3) The requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks, except for the requirements of Section 25297.1 related to the abatement of unauthorized releases of hazardous substances from underground storage tanks, and the requirements of any underground storage tank ordinance adopted by a city or county. A certified unified program agency may oversee the abatement of unauthorized releases of hazardous substances from underground storage tanks pursuant to Section 25297.1.

(4) The requirements of Article 1 (commencing with Section 25501) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning acutely hazardous materials.

(6) The requirements of paragraph (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 of the Health and Safety Code, concerning hazardous material management plans and inventories, and, to the extent determined to be appropriate by the State Fire Marshal, the requirements of paragraph (b) of Section 80.103 of the Uniform Fire Code related to permits for the handling, use, and storage of hazardous materials.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

25404.1. (a) (1) All aspects of the unified program related to the adoption and interpretation of statewide standards and requirements shall be the responsibility of the state agency which is

charged with that responsibility under existing law. For underground storage tanks, that agency shall be the State Water Resources Control Board. The Department of Toxic Substances Control shall have the sole responsibility for the issuances of variances pursuant to Section 25143 and for the determination of whether or not a waste is hazardous or nonhazardous.

(2) Those aspects of the unified program related to the application of statewide standards to particular facilities, including the grant of authorizations, the issuance of permits, the review of reports and plans, and the enforcement of those standards and requirements against particular facilities, shall be the responsibility of the certified unified program agency.

(b) (1) On or before January 1, 1996, each county shall apply to the secretary to be certified as a unified program agency to implement the unified program within the unincorporated area of the county and within each city in the county, in which area or city, as of January 1, 1996, the city or other local agency has not applied to be the certified unified program agency.

(2) (A) Any city or other local agency which, as of December 31, 1995, has been designated as an administering agency pursuant to Section 25502, or which has assumed responsibility for the implementation of Chapter 6.7 (commencing with Section 25280) pursuant to Section 25283, may apply to the secretary to become the certified unified program agency to implement the unified program within the jurisdictional boundaries of the city or local agency.

(B) A city or other local agency which, as of December 31, 1995, has not been designated as an administering agency pursuant to Section 25502, or which has not assumed responsibility for the implementation of Chapter 6.7 (commencing with Section 25280) pursuant to Section 25283, may apply to the secretary to become the certified unified program agency within the jurisdictional boundaries of the city or local agency if it enters into an agreement with the county to become the certified unified program agency within those boundaries. A county shall not refuse to enter into such an agreement unless it specifies in writing its reasons for failing to enter into the agreement. However, if the city does not enter into the agreement with the county, within 30 days of receiving a county's reasons for failing to enter into agreement, a city may request that the secretary allow it to apply to be a certified unified program agency and the secretary may, in his or her discretion, approve the request.

(3) A city, county, or joint powers agency may propose, in its application for certification to the secretary, to allow other public agencies to implement certain elements of the unified program, but the secretary shall accept that proposal only if the secretary makes the findings specified in subdivision (d) of Section 25404.3.

(4) If a city or other local agency which, as of December 31, 1995, has been designated as an administering agency pursuant to Section 25502, or has assumed responsibility for the implementation of

Chapter 6.7 (commencing with Section 25280) pursuant to Section 25283, requests that the county propose in its application for certification to the secretary that the city or local agency implement, within the jurisdictional boundaries of the city or local agency, those elements of the unified program which, as of December 31, 1995, the city or local agency has authority to administer, the county shall grant that request.

25404.2. (a) The certified unified program agency in each jurisdiction shall do all of the following:

(1) Develop and implement a program which consolidates all permits or other grants of authorization issued pursuant to the provisions specified in subdivision (c) of Section 25404, or pursuant to any local ordinance or regulation relating to the handling of hazardous waste or hazardous materials, into a single permit or grant of authorization.

(2) To the maximum extent feasible within statutory constraints, consolidate, coordinate, and make consistent any local or regional regulations, ordinances, requirements, or guidance documents related to the implementation of the provisions specified in subdivision (c) of Section 25404 or pursuant to any regional or local ordinance or regulation pertaining to hazardous waste or hazardous materials. This paragraph does not affect the authority of a certified unified program agency with regard to the preemption of the certified unified program agency's authority under state law.

(3) Develop and implement a single, unified inspection and enforcement program in order to ensure coordinated, efficient, and effective enforcement of the provisions specified in subdivision (c) of Section 25404, and any local ordinance or regulation pertaining to the handling of hazardous waste or hazardous materials.

(4) Coordinate, to the maximum extent feasible, the single, unified inspection and enforcement program with the inspection and enforcement program of other federal, state, regional, and local agencies which affect facilities regulated by the unified program. This paragraph does not prohibit the unified program agency, or any other agency, from conducting inspections, or from undertaking any other enforcement-related activity, without giving prior notice to the regulated entity, except where the prior notice is otherwise required by law.

(b) Each air quality management district or air pollution control district, each publicly owned treatment works, and each office, board, and department within the California Environmental Protection Agency, shall coordinate, to the maximum extent feasible, those aspects of its inspection and enforcement program which affect facilities regulated by the unified program with the inspection and enforcement programs of each certified unified program agency.

(c) The certified unified program agency may incorporate, as part of the unified program within its jurisdiction, the implementation and enforcement of state laws regulating hazardous waste or hazardous materials, other than those specified in subdivision (c) of

Section 25404, if that incorporation will not impair the ability of the certified unified program agency to fully implement the requirements of subdivision (a).

25404.3. (a) The secretary shall, within a reasonable time after submission of an application for certification pursuant to Section 25404.2, but not to exceed 180 days, review the application, and, after holding a public hearing, determine if the application should be approved. Before disapproving an application for certification, the secretary shall submit to the applicant agency a notification of the secretary's intent to disapprove the application, in which the secretary shall specify the reasons why the applicant agency does not have the capability or the resources to fully implement and enforce the unified program in a manner that is consistent with the regulations implementing the unified program adopted by the secretary pursuant to this chapter. The secretary shall provide the applicant agency with a reasonable time to respond to the reasons specified in the notification and to correct deficiencies in its application. The applicant agency may request a second public hearing, at which the secretary shall hear the applicant agency's response to the reasons specified in the notification.

(b) In determining whether an applicant agency should be certified, the secretary, after receiving comments from the director, the Director of the Office of Emergency Services, the State Fire Marshal, and the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, shall consider at least all of the following factors:

(1) Adequacy of the technical expertise possessed by each certified unified program agency which will be implementing each element of the unified program, including, but not limited to, whether the agency responsible for implementing and enforcing the requirements of Chapter 6.5 (commencing with Section 25100) satisfies the requirements of Section 66272.44 of Title 22 of the California Code of Regulations.

(2) Adequacy of staff resources.

(3) Adequacy of budget resources and funding mechanisms.

(4) Training requirements.

(5) Past performance in implementing and enforcing requirements related to the handling of hazardous materials and hazardous waste.

(6) Recordkeeping and cost accounting systems.

(7) Compliance with the criteria in Section 66272.10 of Title 22 of the California Code of Regulations, except for the requirement of paragraph (2) of subdivision (b) of that section related to countywide jurisdiction.

(c) (1) In making the determination of whether or not to certify a particular applicant agency as a certified unified program agency, the secretary shall consider the applications of every other applicant agency applying to be a certified unified program agency within the

same county, in order to determine the impact of each certification decision on the county. If the secretary identifies that there may be adverse impacts on the county if any particular agency in a county is certified, the secretary shall work cooperatively with each affected agency to address the secretary's concerns.

(2) The secretary shall not certify an agency to be a certified unified program agency unless the secretary finds both of the following:

(A) The unified program will be implemented in a coordinated and consistent manner throughout the entire county in which the applicant agency is located.

(B) The administration of the unified program throughout the entire county in which the applicant agency is located will be less fragmented between jurisdictions, as compared to before January 1, 1994, with regard to the administration of the provisions specified in subdivision (c) of Section 25404.

(d) The secretary shall not certify an applicant agency which proposes to allow other agencies to implement certain elements of the unified program unless the secretary makes all of the following findings:

(1) The applicant agency has adequate authority, and has in place adequate systems, protocols, or agreements, to ensure that the actions of the other agencies proposed to implement certain elements of the unified program are fully coordinated and consistent with each other and with those of the applicant agency, and to ensure full compliance with the regulations implementing the unified program adopted by the secretary pursuant to this chapter.

(2) The other agencies proposed to implement certain elements of the unified program have the capability and resources to implement those elements, taking into account the factors designated in subdivision (b).

(3) If any of the other agencies proposed to implement certain elements of the unified program are not directly responsible to the same governing body as the applicant agency, the applicant agency maintains an agreement with any agency which ensures that the requirements of Section 25404.2 will be fully implemented.

(4) If the applicant agency proposes that any agency other than itself will be responsible for implementing aspects of the single fee system imposed pursuant to Section 25404.5, the applicant agency maintains an agreement with that agency which ensures that the fee system is implemented in a fully consistent and coordinated manner, and which ensures that each participating agency receives the amount which it determines to constitute its necessary and reasonable costs of implementing the element or elements of the unified program which it is responsible for implementing.

(e) Until a city's or county's application for certification to implement the unified program is acted upon by the secretary, the roles, responsibilities, and authority for implementing the programs identified in subdivision (c) of Section 25404 which existed in that

city or county pursuant to statutory authorization as of December 31, 1993, shall remain in effect.

(f) (1) If no local agency has been certified by January 1, 1997, to implement the unified program within a city, either the county in which the city is located, or the joint powers agency into which the county has entered for the purposes of implementing the unified program, shall implement the unified program within that city, if the county or joint powers agency is a certified unified program agency. In such an instance, the secretary shall work cooperatively with the county or joint powers agency and the city to develop the details of the county's unified program implementation efforts in that city.

(2) If no local agency has been certified by January 1, 1997, to implement the unified program within the unincorporated area of a county, the secretary shall determine how the unified program should be implemented in the unincorporated area of the county, and in any city in which there is no agency certified to implement the unified program. In such an instance, the secretary shall work cooperatively with the county and cities to determine which combination of state and local agencies should implement the unified program, and shall determine which agency should be designated as the certified unified program agency. If the secretary determines that the protection of public health and safety and the environment would be best served by maintaining part or all of the roles, responsibilities, and authority for implementing the programs identified in subdivision (c) of Section 25404 which existed in the city or county as of December 31, 1993, the secretary may authorize those roles and responsibilities and that authority to continue.

(g) (1) If a certified unified program agency wishes to withdraw from its obligations to implement the unified program and is a city or a joint powers agency implementing the unified program within a city, the agency may withdraw after providing 180 days' notice to the secretary and to the county within which the city is located, or to the joint powers agency with which the county has an agreement to implement the unified program.

(2) Whenever a certified unified program agency withdraws from its obligations to implement the unified program, or the secretary withdraws an agency's certification pursuant to Section 25404.4, the successor certified unified program agency shall be determined in accordance with subdivision (f).

25404.4. (a) (1) The secretary shall periodically review the ability of each certified unified program agency to carry out the requirements of this chapter. If a certified unified program agency fails to meet its obligations to adequately implement the unified program, the secretary may withdraw the agency's certification, or may enter into a program improvement agreement with the agency to make necessary improvements. An agency with which the secretary has entered into a program improvement agreement may continue to implement the unified program while the program improvement agreement is in effect and is complied with.

(2) Before withdrawing an agency's certification, the secretary shall submit to the certified unified program agency a notification of the secretary's intent to withdraw certification, in which the secretary shall specify the reasons why the certified unified program agency has failed to meet its obligations to adequately implement the unified program. The secretary shall provide the certified unified program agency with a reasonable time to respond to the reasons specified in the notification and to correct the deficiencies specified in the notification. The certified unified program agency may request a public hearing, at which the secretary shall hear the agency's response to the reasons specified in the notification.

(b) If the secretary finds that a certified unified program agency has failed to adequately enforce the requirements of the unified program with respect to a particular facility, the secretary may direct the appropriate state agency to take any necessary actions and to issue necessary orders to the facility. If the secretary finds that this failure to adequately enforce the requirements of the unified program may result in an imminent and substantial endangerment to the environment or to the public health and safety, the secretary shall direct the appropriate state agency to take any necessary actions and to issue the necessary orders to the facility.

25404.5. (a) (1) Each certified unified program agency shall institute a single fee system, which shall replace the fees levied pursuant to Section 25205.14 on hazardous waste generators conditionally authorized to conduct treatment pursuant to Section 25200.3, conditionally exempted pursuant to subdivision (a) or (c) of Section 25201.5, and facilities deemed to hold a permit-by-rule pursuant to the regulations adopted by the Department of Toxic Substances Control, and which shall also replace any fees levied by a local agency pursuant to Sections 25287, 25513, and 25535.2, or any other fee levied by a local agency specifically to fund the implementation of the provisions specified in subdivision (c) of Section 25404. Notwithstanding Sections 25205.14, 25287, 25513, and 25535.2, a person who complies with the certified unified program agency's single fee system fee shall not be required to pay any fee levied pursuant to those sections.

(2) The governing body of the certified unified program agency shall establish the amount to be paid by each person regulated by the unified program under the single fee system at a level sufficient to pay the necessary and reasonable costs incurred by the certified unified program agency and by any participating agency pursuant to the requirements of paragraph (4) of subdivision (d) of Section 25404.3.

(3) The fee system may also be designed to recover the necessary and reasonable costs incurred by the certified unified program agency, or a participating agency pursuant to the requirements of paragraph (4) of subdivision (d) of Section 25404.3, in administering provisions other than those specified in subdivision (c) of Section 25404, if the implementation and enforcement of those provisions has

been incorporated as part of the unified program by the certified unified program agency pursuant to subdivision (b) of Section 25404.2, and if the single fee system replaces any fees levied as of January 1, 1994, to fund the implementation of those additional provisions.

(4) The amount to be paid by a person regulated by the unified program may be adjusted to account for the differing costs of administering the unified program with respect to that person's regulated activities.

(b) The single fee system instituted by each certified unified program agency shall include an assessment on each person regulated by the unified program of a surcharge, the amount of which shall be determined by the secretary annually, to cover the necessary and reasonable costs of state agencies in carrying out their responsibilities under this chapter. The secretary may adjust the amount of the surcharge to be collected by different certified unified program agencies to reflect the different costs incurred by the state in supervising the implementation of the unified program in different jurisdictions. The certified unified program agency may itemize the amount of the surcharge on any bill, invoice, or return which the agency sends to a person regulated by the unified program. Each certified unified program agency shall transmit all surcharge revenues collected to the secretary within 45 days after receipt of the revenues pursuant to subdivision (a). The surcharge shall be deposited in the Unified Program Account, which is hereby created in the General Fund and which may be expended, upon appropriation by the Legislature, to any state agency for the purposes of implementing this chapter.

(c) Each certified unified program agency and the secretary shall, before the institution of the single fee system and the assessment of the surcharge, implement a fee accountability program designed to encourage more efficient and cost-effective operation of the program for which the single fee and surcharge are assessed. The fee accountability programs shall include those elements of the requirements of the plan adopted pursuant to Section 25206 which the secretary determines are appropriate.

25404.6. (a) The secretary may immediately implement those aspects of the unified program which do not require statutory changes. If the secretary determines that statutory changes are needed to fully implement the program, the secretary shall recommend those changes to the Legislature on or before March 1, 1995, so that the changes, if approved by the Legislature, can be implemented as part of the program by January 1, 1996.

(b) The secretary shall work in close consultation with the Environmental Protection Agency, and shall implement this chapter only to the extent that doing so will not result in this state losing its authorization or delegation to implement the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.), the Federal Water Pollution Control Act, (33 U.S.C. Sec. 1251 et

seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Sec. 11001 et seq.), and any other applicable federal laws.

(c) The secretary shall adopt regulations necessary for the orderly administration and implementation of the unified program. The secretary shall adopt those regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare.

SEC. 5. Section 39661 of the Health and Safety Code is amended to read:

39661. (a) (1) Upon receipt of the evaluation and recommendations prepared pursuant to Section 39660, the state board, in consultation with, and with the participation of, the office, shall prepare a report in a form which may serve as the basis for regulatory action regarding a particular substance pursuant to subdivisions (b) and (c) of Section 39662.

(2) The report shall include and be developed in consideration of the evaluation and recommendations of the office.

(b) The report, together with the scientific data on which the report is based, shall, with the exception of trade secrets, be made available to the public and shall be formally reviewed by the scientific review panel established pursuant to Section 39670. The panel shall review the scientific procedures and methods used to support the data, the data itself, and the conclusions and assessments on which the report is based. Any person may submit any information for consideration by the panel. which may, at its discretion, receive oral testimony. The panel shall submit its written findings to the state board within 45 days after receiving the report. The panel may, however, petition the state board for an extension of the deadline, which may not exceed 15 working days.

(c) If the scientific review panel determines that the health effects report is not based upon sound scientific knowledge, methods, or practices, the report shall be returned to the state board, and the state board, in consultation with, and with the participation of, the office, shall prepare revisions to the report which shall be resubmitted, within 30 days following receipt of the panel's determination, to the scientific review panel which shall review the report in conformance with subdivision (b) prior to a formal proposal by the state board pursuant to Section 39662.

SEC. 5. Division 37 (commencing with Section 57000) is added to the Health and Safety Code, to read:

DIVISION 37. REGULATION OF ENVIRONMENTAL PROTECTION

57000. (a) For purposes of this division, the following terms have the following meaning:

(1) "Agency" means the California Environmental Protection Agency.

(2) "Secretary" means the Secretary for Environmental Protection.

(b) On or before December 31, 1997, the agency, and the offices, boards, and departments within the agency, shall institute quality government programs to achieve increased levels of environmental protection and the public's satisfaction through improving the quality, efficiency, and cost-effectiveness of the state programs which implement and enforce state and federal environmental protection statutes. These programs shall be designed to increase the level of environmental protection while expediting decision-making and producing cost savings. The secretary shall create an advisory group comprised of state and local government, business, environmental, and consumer representatives experienced in quality management to provide guidance in that effort. The secretary shall develop a model quality management program that local agencies charged with implementing air quality, water quality, toxics, solid waste, and hazardous waste laws and regulations may use at their discretion.

(c) On and after December 31, 1998, the agency, and each board, department, and office within the agency, shall submit a yearly report to the Governor and Legislature, as part of the budget process, reporting on the extent to which they have attained their performance objectives, and on their continuous quality improvement efforts.

(d) Nothing in this section shall be interpreted to abrogate any collective bargaining agreement or interfere with any established employee rights.

(e) For purposes of this section, "quality government program" means all of the following:

(1) A process for obtaining the views of employees, the regulated community, the public, environmental organizations, and governmental officials with regard to the performance, vision, and needs of the agency implementing the quality government program.

(2) A process for developing measurable performance objectives using the views of the persons and organizations specified in paragraph (1).

(3) Processes for continually improving quality and for training agency personnel, using the information obtained from implementing paragraphs (1) and (2).

57001. (a) Except as provided in subdivision (f), each office, board, and department within the agency shall, on or before December 31, 1995, implement a fee accountability program for the

fees specified in subdivision (d). That fee accountability program shall be designed to encourage more efficient and cost-effective operation of the programs for which the fees are assessed, and shall be designed to ensure that the amount of each fee is not more than is reasonably necessary to fund the efficient operation of the activities or programs for which the fee is assessed.

(b) Before implementing the fee accountability program required by this section, each board, department, and office within the agency shall conduct a review of the fees identified in subdivision (d) which it assesses. The purpose of this review shall be to determine what changes, if any, should be made to all of the following, in order to implement a fee system which accomplishes the purposes set forth in subdivision (a):

(1) The amount of the fee.

(2) The manner in which the fee is assessed.

(3) The management and workload standards of the program or activity for which the fee is assessed.

(c) The fee accountability program of each board, department, or office within the agency shall include those elements of the requirements of Section 25206 which the secretary determines are appropriate in order to accomplish the purposes set forth in subdivision (a).

(d) This section applies to the following fees:

(1) The fee assessed pursuant to subdivision (d) of Section 13146 of the Food and Agricultural Code to develop data concerning the environmental fate of a pesticide when the registrant fails to provide the required information.

(2) The surface impoundment fees assessed pursuant to Section 25208.3.

(3) The fee assessed pursuant to Section 43203 to recover the costs of the State Air Resources Board in verifying manufacturer compliance on emissions from new vehicles prior to retail sale.

(4) The fee assessed pursuant to Section 44380 to recover the costs of the State Air Resources Board and the Office of Environmental Health Hazard Assessment in implementing and administering the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Part 6 (commencing with Section 44300) of Division 26).

(5) The fee assessed pursuant to Section 43212 of the Public Resources Code to recover the costs of the California Integrated Waste Management Board when it assumes the responsibilities of the local enforcement agency.

(6) The fee assessed pursuant to Section 43508 of the Public Resources Code to recover the costs of the California Integrated Waste Management Board in reviewing closure plans.

(7) The water rights permit fees assessed pursuant to Chapter 8 (commencing with Section 1525) of Part 2 of Division 2 of the Water Code.

(8) The fee assessed pursuant to subdivision (c) of Section 13260 of the Water Code for waste discharge requirements, including, but

not limited to, requirements for storm water discharges, and the fee assessed pursuant to subdivision (i) of Section 12360 of the Water Code for National Pollution Discharge Elimination System permits.

(9) The costs assessed pursuant to Section 13304 of the Water Code to recover the costs of the State Water Resources Control Board or the California regional water quality control boards in implementing and enforcing cleanup and abatement orders.

(e) If a board, department, or office within the agency determines that the amount of a fee that is fixed in statute should be increased in order to implement a fee accountability system which accomplishes the purposes of subdivision (a), it shall notify the Legislature, and make recommendations concerning appropriate increases in the statutorily fixed fee amount. For fees whose amount is not fixed in statute, the board, department, or office may increase the fee only if it makes written findings in the record that it has implemented a fee accountability program which complies with this section.

(f) The Department of Toxic Substances Control shall be deemed to be in compliance with this section if it complies with Section 25206.

57002. The agency shall conduct a study by surveying state, regional, and local agencies charged with implementing air quality, water quality, toxics, solid waste, and hazardous waste laws and regulations to determine how much revenue is derived from fines and penalties and to what purposes that revenue is directed. The study should include a review of the extent to which those funds are used to support state, regional, and local agency operations.

57003. (a) Before a board, department or office within the agency adopts chemical risk assessment guidelines or policies for evaluating the toxicity of chemicals or prepares a health evaluation of a chemical that will be used in the regulatory process of another board, department, or office, the board, department, or office shall first convene a public workshop at which the guidelines, policies, or health evaluation may be discussed. The public workshop shall be designed to encourage a constructive dialogue between the scientists employed by the board, department, or office that prepared the proposed guidelines or policies or health evaluation and scientists not employed by that board, department, or office and to evaluate the degree to which the proposed guidelines or policies or health evaluation are based on sound scientific methods, knowledge, and practice. Following the workshop, the agency shall revise the guidelines, policies, or health evaluation, as appropriate, and circulate it for public comment for a period of at least 30 days.

(b) In any case where the guidelines, policies, or health evaluations described in subdivision (a) are proposed, or are being prepared, pursuant to a statutory requirement that specifies a procedure or a time period for carrying out the requirement, the requirements of subdivision (a) do not authorize a delay or a postponement in carrying out the statutory requirement.

57004. (a) On or before June 30, 1994, the Director of

Environmental Health Hazard Assessment shall convene an advisory committee consisting of distinguished scientists not employed by the boards, departments, and offices within the agency, to conduct a comprehensive review of the policies, methods, and guidelines followed by the boards, departments, and offices for the identification and assessment of chemical toxicity.

(b) The purpose of this comprehensive review shall be to make recommendations to the Director of Environmental Health Hazard Assessment and the secretary concerning whether or not any changes should be made to ensure that the state's policies, methods, and guidelines for the identification and assessment of chemical toxicity are based upon sound scientific knowledge, methods and practices. This review shall include, but shall not be limited to, an assessment of the appropriateness of any differences between the policies, methods, and procedures employed by the state and those employed by the National Academy of Sciences, the Environmental Protection Agency, and other similar bodies.

57005. (a) Commencing January 1, 1994, each board, department, and office within the agency, before adopting any major regulation, shall evaluate the alternatives to the requirements of the proposed regulation that are submitted to the board, department, or office pursuant to paragraph (2) of subdivision (a) of Section 11346.53 of the Government Code and consider whether there is a less costly alternative or combination of alternatives which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed regulatory requirements.

(b) For purposes of this section, "major regulation" means any regulation that will have an economic impact on the state's business enterprises in an amount exceeding ten million dollars ($10,000,000), as estimated by the board, department, or office within the agency proposing to adopt the regulation in the assessment required by Section 11346.53 of the Government Code.

(c) On or before December 31, 1994, after consulting with the Secretary of Trade and Commerce, the director or executive officer of each board, department, and office within the agency, and after receiving public comment, the secretary shall adopt guidelines to be followed by the boards, departments, and offices within the agency concerning the methods and procedures to be used in conducting the evaluation required by this section.

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

CHAPTER 419

An act to amend Sections 25373 and 37361 of, and to add Sections 65943.5 and 65956.5 to, the Government Code, and to add Division 34 (commencing with Section 71000) to the Public Resources Code, relating to environmental quality.

[Approved by Governor September 20, 1993. Filed with Secretary of State September 21, 1993.]

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

SECTION 1. Section 25373 of the Government Code is amended to read:

25373. (a) The board of supervisors may acquire property for the preservation or development of a historical landmark. The board of supervisors may also acquire property for development for recreational purposes and for development of facilities in connection therewith.

(b) The board of supervisors may, by ordinance, provide special conditions or regulations for the protection, enhancement, perpetuation, or use of places, sites, buildings, structures, works of art, and other objects having a special character or special historical or aesthetic interest or value. Those special conditions and regulations may include appropriate and reasonable control of the appearance of neighboring private property within public view.

(c) Until January 1, 1995, subdivision (b) shall not apply to noncommercial property owned by a religiously affiliated association or corporation not organized for private profit, whether incorporated as a religious or public benefit corporation, unless the owner of the property does not object to its application. Nothing in this subdivision shall be construed to infringe on the authority of the board of supervisors to enforce special conditions and regulations on any property designated prior to January 1, 1994.

SEC. 2. Section 37361 of the Government Code is amended to read:

37361. (a) The legislative body may acquire property for the preservation or development of a historical landmark. The legislative body may also acquire property for development for recreational purposes and for development of facilities in connection therewith.

(b) The legislative body may provide, for places, buildings, structures, works of art, and other objects having a special character or special historical or aesthetic interest or value, special conditions or regulations for their protection, enhancement, perpetuation, or use, which may include appropriate and reasonable control of the use or appearance of neighboring private property within public view, or both.

(c) Until January 1, 1995, subdivision (b) shall not apply to noncommercial property owned by a religiously affiliated association

or corporation not organized for private profit, whether incorporated as a religious or public benefit corporation, unless the owner of the property does not object to its application. This subdivision does apply to a charter city. Nothing in this subdivision shall be construed to infringe on the authority of any legislative body to enforce special conditions and regulations on any property designated prior to January 1, 1994.

SEC. 3. Section 65943.5 is added to the Government Code, to read:

65943.5. (a) Notwithstanding any other provision of this chapter, any appeal pursuant to subdivision (c) of Section 65943 involving a permit application to a board, office, or department within the California Environmental Protection Agency shall be made to the Secretary for Environmental Protection.

(b) Notwithstanding any other provision of this chapter, any appeal pursuant to subdivision (c) of Section 65943 involving an application for the issuance of an environmental permit from an environmental agency shall be made to the Secretary for Environmental Protection under either of the following circumstances:

(1) The environmental agency has not adopted an appeals process pursuant to subdivision (c) of Section 65943.

(2) The environmental agency declines to accept an appeal for a decision pursuant to subdivision (c) of Section 65943.

(c) For purposes of subdivision (b), "environmental permit" has the same meaning as defined in Section 71012 of the Public Resources Code, and "environmental agency" has the same meaning as defined in Section 71011 of the Public Resources Code, except that "environmental agency" does not include the agencies described in subdivisions (c) and (h) of Section 71011 of the Public Resources Code.

SEC. 4. Section 65956.5 is added to the Government Code, to read:

65956.5. (a) Prior to an applicant providing advance notice to an environmental agency of the intent to provide public notice pursuant to subdivision (b) of Section 65956 for action on an environmental permit, the applicant may submit an appeal in writing to the governing body of the environmental agency, or if there is no governing body, to the director of the environmental agency, as provided by the environmental agency, for a determination regarding the failure by the environmental agency to take timely action on the issuance or denial of the environmental permit in accordance with the time limits specified in this chapter.

(b) There shall be a final written determination by the environmental agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. The final written determination by the environmental agency shall specify both of the following:

(1) The reason or reasons for failing to act pursuant to the time

limits in this chapter.

(2) A date by which the environmental agency shall act on the permit application.

(c) Notwithstanding any other provision of this chapter, any appeal submitted pursuant to subdivision (a) involving an environmental permit from an environmental agency shall be made to the Secretary for Environmental Protection if the environmental agency declines to accept the appeal for a decision pursuant to subdivision (a) or the environmental agency does not make a final written determination pursuant to subdivision (b).

(d) Any appeal submitted pursuant to subdivision (a) involving an environmental permit to a board, office, or department within the California Environmental Protection Agency shall be made to the Secretary for Environmental Protection.

(e) For purposes of this section, "environmental permit" has the same meaning as defined in Section 71012 of the Public Resources Code, and "environmental agency" has the same meaning as defined in Section 71011 of the Public Resources Code, except that "environmental agency" does not include the agencies described in subdivisions (c) and (h) of Section 71011 of the Public Resources Code.

SEC. 5. Division 34 (commencing with Section 71000) is added to the Public Resources Code, to read:

DIVISION 34. ENVIRONMENTAL PROTECTION PERMITS

CHAPTER 1. LEGISLATIVE FINDINGS AND INTENT

71000. This division shall be known, and may be cited, as the Environmental Protection Permit Reform Act of 1993.

71001. The Legislature hereby finds and declares all of the following:

(a) California's environmental protection programs have established strict standards to reduce pollution and protect the public health and safety and the environment. The single purpose programs instituted to achieve these standards have been among the most successful efforts in the world, and have produced significant gains in protecting California's environment in the face of substantial population growth.

(b) Continued progress to achieve the environmental standards in face of continued population growth will require greater coordination between the single purpose environmental programs and more efficient operation of these programs overall. Pollution must be prevented and controlled and not simply transferred to another media or another place. This goal can only be achieved by maintaining the current environmental protection standards and by greater integration of the existing programs.

(c) As the number of environmental laws and regulations have grown in California, so have the number of permits required of

business and government. This regulatory burden has significantly added to the cost and time needed to obtain essential operating permits in California. The increasing number of individual permits and permit authorities has generated the continuing potential for conflict, overlap, and duplication between the various state, local, and federal environmental permits.

(d) To ensure that local needs and environmental conditions receive the proper attention, the issuance of environmental permits should continue to be made, to the extent feasible, at the regional and local levels of the environmental programs. To establish the framework for coordination among the regional offices of the environmental protection programs, consistency in regional boundaries should be achieved to the maximum extent practicable.

(e) The purpose of this division is to require the Secretary for Environmental Protection to institute new, efficient procedures which will assist businesses and public agencies in complying with the environmental quality laws in an expedited fashion, without reducing protection of public health and safety and the environment.

(f) Those procedures need to provide a permit process that promotes effective dialogue and ensures ease in the transfer and clarification of technical information, while preventing duplication. It is necessary that the procedures establish a process for preliminary and ongoing meetings between the applicant, the consolidated permit agency, and the participating permit agencies, but do not preclude the applicant or participating permit agencies from individually coordinating with each other.

(g) It is necessary, to the maximum extent practicable, that the procedures established in this division ensure that the consolidated permit agency process and applicable permit requirements and criteria are integrated and run concurrently, rather than consecutively.

CHAPTER 2. DEFINITIONS

71010. "Secretary" means the Secretary for Environmental Protection.

71011. "Environmental agency" means any of the following:

(a) The Department of Toxic Substances Control, the Department of Pesticide Regulation, the State Air Resources Board, the State Water Resources Control Board, the California Integrated Waste Management Board, and the Office of Environmental Health Hazard Assessment.

(b) A California regional water quality control board.

(c) A district, as defined in Section 39025 of the Health and Safety Code.

(d) An enforcement agency, as defined in Section 40130 of the Public Resources Code.

(e) A county agricultural commissioner with respect to his or her

administration of Divisions 6 (commencing with Section 11401) and 7 (commencing with Section 12501) of the Food and Agricultural Code.

(f) The local agency responsible for administering Chapter 6.7 (commencing with Section 25280) of the Health and Safety Code concerning underground storage tanks and any underground storage tank ordinance adopted by a city or county.

(g) The local agency responsible for the administration of the requirements imposed pursuant to Section 13370.5 of the Water Code.

(h) Any other state, regional, or local permit agency for the project that participates at the request of the permit applicant upon the permit agency's agreement to be subject to this division.

71012. "Environmental permit" means any license, certificate, registration, permit, or other form of authorization required by an environmental agency to engage in a particular activity. "Environmental permit" includes, but is not limited to, activities subject to Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, if the activities are under the jurisdiction of an environmental agency. "Environmental permit" does not include any certification or decision pursuant to Division 13 (commencing with Section 21000).

71013. "Project" means an activity, the conduct of which requires an environmental permit from two or more environmental agencies.

71014. "Consolidated permit" means a permit incorporating the environmental permits granted by environmental agencies for a project and issued in a single permit document by the consolidated permit agency.

71015. "Consolidated permit agency" means the environmental agency that has the greatest overall jurisdiction over a project, as determined pursuant to Section 71020.

71016. "Participating permit agency" means an environmental agency, other than the consolidated permit agency, that is responsible for the issuance of an environmental permit for a project.

71017. (a) "Council" means the California Environmental Policy Council.

(b) The council is hereby created and consists of the following members or their designees:

(1) The Secretary for Environmental Protection.

(2) The Director of Pesticide Regulation.

(3) The Director of Toxic Substances Control.

(4) The Chairperson of the State Air Resources Board.

(5) The Chairperson of the State Water Resources Control Board.

(6) The Director of the Office of Environmental Health Hazard Assessment.

(7) The Chairperson of the California Integrated Waste Management Board.

CHAPTER 3. CONSOLIDATED PERMITS

71020. (a) On or before January 1, 1995, the secretary shall establish an administrative process which may be used, at the request of a permit applicant for a project pursuant to Section 71021, for the designation of a consolidated permit agency for the project.

(b) That administrative process shall consist of the establishment of guidelines for designating the consolidated permit agency for the project. The guidelines shall be adopted as regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code. In those cases where an environmental agency is the lead agency for purposes of Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, or Division 13 (commencing with Section 21000), that environmental agency shall be the consolidated permit agency. In other cases, the guidelines shall require that at least the following factors be considered in determining which environmental agency has the greatest overall jurisdiction over the project:

(1) The types of facilities or activities that make up the project.

(2) The types of public health and safety and environmental concerns that should be considered in issuing environmental permits for the project.

(3) The environmental medium that may be affected by the project, the extent of those potential effects, and the environmental protection measures that may be taken to prevent the occurrence of, or to mitigate, those potential effects.

(4) The regulatory activity that is of greatest importance in preventing or mitigating the effects that the project may have on public health and safety or the environment.

(5) The statutory and regulatory requirements that apply to the project and the complexity of those requirements.

(c) The secretary shall also establish a procedure for referring projects to the council for the designation of a consolidated permit agency in any of the following circumstances:

(1) Because of the nature of the project, the guidelines adopted pursuant to subdivision (a) do not provide clear guidance concerning which environmental agency should be designated the consolidated permit agency.

(2) The consolidated permit agency or a participating permit agency disagrees with the designation of the consolidated permit agency.

(3) The environmental agency designated as the consolidated permit agency under the guidelines declines the designation and participating permit agencies are not willing to accept designation as the consolidated permit agency.

71021. (a) A permit applicant for a project may request the secretary to designate a consolidated permit agency to administer the processing and issuance of a consolidated permit for the project pursuant to this division. The secretary, in accordance with the

guidelines and procedures adopted pursuant to Section 71020, shall, within 30 days of the date that the request is received, either designate a consolidated permit agency for the project or refer the designation to the council.

(b) A permit applicant who requests the designation of a consolidated permit agency shall provide the secretary with a description of the project, a preliminary list of the environmental permits that the project may require, the identity of any public agency that has been designated the lead agency for the project pursuant to Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code or Division 13 (commencing with Section 21000) of the Public Resources Code, and the identity of the participating permit agencies. The secretary may request any information from the permit applicant that is necessary to make the designation under subdivision (a), and may convene a scoping meeting of the likely consolidated permit agency and participating permit agencies in order to make that designation.

(c) The consolidated permit agency shall serve as the main point of contact for the permit applicant with regard to the processing of the consolidated permit for the project and shall manage the procedural aspects of that processing consistent with existing laws governing the consolidated permit agency and participating permit agencies, and with the procedures agreed to by those agencies in accordance with Section 71022. In carrying out these responsibilities, the consolidated permit agency shall ensure that the permit applicant has all the information needed to apply for all the component environmental permits that are incorporated in the consolidated permit for the project, coordinate the review of those environmental permits by the respective participating permit agencies, ensure that timely environmental permit decisions are made by the participating permit agencies, and assist in resolving any conflict or inconsistency among the environmental permit requirements and conditions that are to be imposed by the participating permit agencies with regard to the project.

(d) This division shall not be construed to limit or abridge the powers and duties granted to a participating permit agency pursuant to the law that authorizes or requires the agency to issue an environmental permit for a project. Each participating permit agency shall retain its authority to make all decisions on all nonprocedural matters with regard to the respective component environmental permit that is within its scope of its responsibility, including, but not limited to, the determination of environmental permit application completeness, environmental permit approval or approval with conditions, or environmental permit denial. The consolidated permit agency may not substitute its judgment for that of a participating permit agency on any such nonprocedural matters.

71022. (a) Within 15 working days of the date that the consolidated permit agency is designated, the consolidated permit agency shall convene a meeting with the permit applicant for the

project and the participating permit agencies. The meeting agenda shall include at least all of the following matters:

(1) A determination of the environmental permits that are required for the project.

(2) A review of the environmental permit application forms and other application requirements of the agencies that are participating in the consolidated permit.

(3) A discussion of the option available to the permit applicant to use the consolidated permit application form that is authorized by subdivision (e) or (f) of Section 15399.56 of the Government Code in lieu of the separate application forms for each component environmental permit that would be provided by the consolidated permit agency and the participating permit agencies.

(4) A determination of the time lines that will be used by the consolidated permit agency and each participating permit agency to make environmental permit decisions, including the time periods required to determine if the environmental permit applications are complete or the consolidated permit application is complete, to review the application or applications, and to process the component environmental permits, and the timelines that will be used by the consolidated permit agency to aggregate the component environmental permits into, and to issue, the consolidated permit. Notwithstanding Chapter 3 (commencing with Section 15374) of Part 6.7 of Division 3 of Title 2 of the Government Code, and Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, the timelines established pursuant to this paragraph may, with the assent of the consolidated permit agency and each participating permit agency, commit the consolidated permit agency and each participating permit agency to act on the component environmental permit within time periods that are different than those required by Sections 65950 and 65952 of the Government Code, subdivisions (a) and (b) of Section 15376 of the Government Code, or other applicable provisions of law. However, no accelerated time period for the consideration of an environmental permit application may be set if that accelerated time period would be inconsistent with, or in conflict with, any time period or series of time periods set by statute for that consideration, or with any statute, rule, or regulation, or adopted state policy, standard, or guideline, which require any of the following:

(A) Other agencies, interested persons, or the public to be given adequate notice of the application.

(B) Other agencies to be given a role in, or be allowed to participate in, the decision to approve or disapprove the application.

(C) Interested persons or the public to be provided the opportunity to challenge, comment on, or otherwise voice their concerns regarding the application.

(5) The scheduling of any public hearings that are required to issue environmental permits for the project and a determination of the feasibility of coordinating or consolidating any of those required

public hearings.

(6) A discussion of fee arrangements for the consolidated permit process, including an estimate of the fee required under Section 71026 and the billing schedule.

(b) The consolidated permit agency may request any information from the applicant that is necessary to comply with its obligations under this section, consistent with the timelines set pursuant to this section.

(c) A summary of the decisions made pursuant to this section shall be made available for public review upon the filing of the consolidated environmental permit application or environmental permit applications.

71023. (a) The permit applicant may withdraw from the consolidated permit process by submitting to the consolidated permit agency a written request that the process be terminated. Upon receipt of the request, the consolidated permit agency shall notify the secretary and each participating permit agency that a consolidated permit is no longer applicable to the project.

(b) The permit applicant may submit a written request to the consolidated permit agency that the permit applicant wishes a participating permit agency to withdraw from participation on the basis of a reasonable belief that the issuance of the consolidated permit would be accelerated if the participating permit agency withdraws. In that event, the participating permit agency shall withdraw from participation if the consolidated permit agency approves the request.

71024. The consolidated permit agency shall ensure that the participating permit agencies make all the environmental permit decisions that are necessary for the incorporation of the environmental permits into the consolidated permit and act on the component environmental permits within the time periods established pursuant to paragraph (4) of subdivision (a) of Section 71022.

71025. Each environmental permit incorporated in the consolidated permit shall have the legal status and the regulatory effect that is specified in the statute and regulations under which the environmental permit would be separately issued and shall be administered and enforced by the environmental agency that would have separately issued it.

71026. (a) A consolidated permit agency may charge and collect a reasonable fee from any person seeking a consolidated permit to recover the estimated costs incurred by the consolidated permit agency in carrying out the requirements of this division.

(b) The fees charged shall recover only the costs of performing those consolidated permit services and shall be either negotiated with the permit applicant in the meeting required pursuant to Section 71022, or shall be set by the environmental agency in advance of its designation as a consolidated permit agency for the project in a fee schedule adopted by the environmental agency for use in the

event that the environmental agency is so designated. In addition, the billing process shall provide for accurate time and cost accounting and a billing cycle that provides for progress payments.

71027. A petition by the permit applicant for review of an environmental agency action in issuing, denying, or amending an environmental permit, or any portion of a consolidated permit agency permit, shall be submitted by the permit applicant to the consolidated permit agency or the participating permit agency having jurisdiction over that portion of the consolidated permit and shall be processed in accordance with the procedures of that environmental agency. The environmental agency receiving the petition shall, within 30 days, notify the other environmental agencies participating in the original consolidated permit.

71028. If an applicant petitions for a significant amendment or modification to a consolidated permit application or any of its component environmental permit applications, the consolidated permit agency shall reconvene a meeting of the participating permit agencies, conducted in accordance with Section 71022.

71029. If an applicant fails to provide information required for the processing of the component environmental permit applications for a consolidated permit or for the designation of a consolidated permit agency, the time requirements of this division shall be tolled until such time as the information is provided.

CHAPTER 4. TIME LIMIT APPEALS

71030. (a) On or before December 31, 1994, the secretary shall adopt regulations establishing an expedited appeals process by which a petitioner or applicant may appeal any failure by an environmental agency to take timely action on the issuance or denial of an environmental permit in accordance with the time limits established pursuant to Section 71022 or Section 25199.6 of the Health and Safety Code.

(b) If the secretary finds that the time limits under appeal have been violated without good cause, the secretary shall establish a date certain by which the environmental agency shall act on the permit application with adequate provision for the requirements of subparagraphs (A) to (C), inclusive, of paragraph (4) of subdivision (a) of Section 71022, and provide for the full reimbursement of any filing or permit processing fees paid by the applicant to the environmental agency for the permit application under appeal. For purposes of this section, "good cause" shall have the same meaning as defined in subdivision (h) of Section 15376 of the Government Code.

(c) The determination of the secretary on an appeal shall be based only on procedural violations, including, but not limited to, the exceeding of time limits, not on any nonprocedural matter with regard to the environmental permit application or the environmental permit.

(d) In cases of a violation of time limits set pursuant to Section 71022, the determination of the secretary to order a reimbursement of any application filing fee pursuant to the regulations adopted pursuant to paragraph (2) of subdivision (b) shall only be applicable to the consolidated permit agency or to the participating permit agencies that are in violation of the time limits without showing good cause.

(e) Notwithstanding any other provision of this section, an appeal pursuant to subdivision (a) shall be only for violations of the time limits established pursuant to Section 71022 for those environmental agencies described in subdivisions (c) and (h) of Section 71011.

SEC. 6. On or before April 1, 1996, the Secretary for Environmental Protection shall submit a report to the appropriate policy committees and the fiscal committees of both houses of the Legislature detailing the following information:

(a) The number of instances in which a consolidated permit agency was requested and utilized, and the disposition of those cases.

(b) The amount of time elapsed between an initial request by a permit applicant for a consolidated permit and the ultimate approval of disapproval of the consolidated permit.

(c) The number of instances in which the expedited appeals process was requested, and the disposition of those cases.

SEC. 7. (a) The Legislature hereby finds and declares that Section 2 of this act addresses a matter of statewide interest and concern, because this act exempts from locally imposed restrictions property owned by religious organizations that is used or held for religious purposes, and because these restrictions are neither authorized nor compelled by concerns related to the public health or safety.

(b) Sections 1 and 2 of this act ensure the protection of religious freedom guaranteed by Section 4 of Article I of the California Constitution and by the First Amendment to the United States Constitution.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 420

An act to amend Sections 26840.7 and 26840.8 of the Government Code, and to amend Section 18305 of the Welfare and Institutions Code, relating to domestic violence.

[Approved by Governor September 20, 1993. Filed with Secretary of State September 21, 1993.]

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

SECTION 1. Section 26840.7 of the Government Code is amended to read:

26840.7. In addition to the fee prescribed by Section 26840 and as authorized by Section 26840.3, the county clerk shall collect a fee of twenty-three dollars ($23) at the time of issuance of the license. The fee shall be disposed of by the clerk pursuant to Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code. Of this amount, four dollars ($4) shall be used, to the extent feasible, to develop or expand domestic violence centers to target underserved areas and populations.

SEC. 2. Section 26840.8 of the Government Code is amended to read:

26840.8. In addition to the fee prescribed by Section 26840.1 and as authorized by Section 26840.3, the person issuing an authorization for the performance of a marriage pursuant to Part 4 (commencing with Section 500) of Division 3 of the Family Code or the county clerk, upon providing a blank authorization form pursuant to Part 4 (commencing with Section 500) of Division 3 of the Family Code, shall collect a fee of twenty-three dollars ($23) at the time of providing the authorization. The fee shall be disposed of pursuant to Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code. Of this amount, four dollars ($4) shall be used, to the extent feasible, to develop or expand domestic violence centers to target underserved areas and populations.

SEC. 3. Section 18305 of the Welfare and Institutions Code is amended to read:

18305. At the time of issuance of a marriage license pursuant to Section 26840 of the Government Code, twenty-three dollars ($23) of each fee paid shall be collected by the county clerk for deposit into the county domestic violence programs special fund. The fees collected in this special fund shall be disbursed to approved programs on a yearly or more frequent basis commencing July 1, 1980.

The board of supervisors shall direct the county clerk to deposit twenty-three dollars ($23) of each fee into the county domestic violence programs special fund. The county domestic violence programs special fund shall fund programs established pursuant to

Section 18304. Four dollars ($4) of each twenty-three dollars ($23) deposited into the county domestic violence programs special fund shall be used, to the extent feasible, to develop or expand domestic violence centers to target underserved areas and populations. No more than 8 percent of the funds shall be expended for the administrative costs associated with the collection and segregation of the additional marriage license fees, administration of the county domestic violence programs special fund, monitoring of the programs, and meeting the other administrative requirements imposed by this chapter. Counties which do not participate in the establishing or funding of domestic violence programs pursuant to this chapter shall be entitled to retain up to 4 percent of the funds for the administrative costs associated with the collection and segregation of the additional marriage license fees and the deposit of these fees in the county domestic violence programs special fund.

CHAPTER 421

An act to amend Section 243 of the Penal Code, relating to domestic violence.

[Approved by Governor September 20, 1993. Filed with Secretary of State September 21, 1993.]

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

SECTION 1. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by a fine of not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding six months, or by both the fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding

one year, or by both the fine and imprisonment.

(c) When a battery is committed against a peace officer, custodial officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by imprisonment in a county jail for a period of not more than one year, or by a fine of not more than two thousand dollars ($2,000), or by imprisonment in the state prison for 16 months, or two or three years.

(d) When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail for a period of not more than one year or imprisonment in the state prison for two, three, or four years.

(e) (1) When a battery is committed against a noncohabiting former spouse, fiancé, fiancée, or a person with whom the defendant currently has, or has previously had, a dating relationship, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail for a period of not more than one year, or by both. If probation is granted, or the execution or imposition of the sentence is suspended, it shall be a condition thereof that the defendant participate in, for no less than one year, and successfully complete, a batterer's treatment program, or if none is available, another appropriate counseling program designated by the court. However, this provision shall not be construed as requiring a city, a county, or a city and county to provide a new program or higher level of service as contemplated by Section 6 of Article XIII B of the California Constitution.

(2) Upon conviction of a violation of this subdivision, if probation is granted, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars ($1,000).

(B) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this

subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(3) Upon conviction of a violation of this subdivision, if probation is granted or the execution or imposition of the sentence is suspended and the person has been previously convicted of a violation of this subdivision and sentenced under paragraph (1), the person shall be imprisoned for not less than 48 hours in addition to the conditions in paragraph (1). However, the court, upon a showing of good cause, may elect not to impose the mandatory minimum imprisonment as required by this subdivision and may, under these circumstances, grant probation or order the suspension of the execution or imposition of the sentence.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence so as to display society's condemnation for these crimes of violence upon victims with whom a close relationship has been formed.

(f) As used in this section:

(1) "Peace officer" means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person possessing a valid course completion certificate from a program approved by the State Department of Health Services for the medical training and education of ambulance personnel, and who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) "Mobile intensive care paramedic" means any person who meets the standards set forth in Section 1797.84 of, and Division 2.5 (commencing with Section 1797) of, the Health and Safety Code.

(4) "Nurse" means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(5) "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(6) "Injury" means any physical injury which requires professional medical treatment.

(7) "Custodial officer" means any person who has the responsibilities and duties described in Section 831 and who is

employed by a law enforcement agency of any city or county or who performs those duties as a volunteer.

(8) "Lifeguard" means a person defined in paragraph (5) of subdivision (c) of Section 241.

(9) "Traffic officer" means any person employed by a city, county, or city and county, to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

(10) "Animal control officer" means any person employed by a city, county, or city and county for purposes of enforcing animal control laws or regulations.

(11) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.

It is the intent of the Legislature by amendments to this section at the 1981–82 and 1983–84 Regular Sessions to abrogate the holdings in cases such as People v. Corey, 21 Cal. 3d 738, and Cervantez v. J.C. Penney Co., 24 Cal. 3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with that employment.

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

CHAPTER 422

An act to amend Section 15051 of the Health and Safety Code, relating to hospital buildings, and making an appropriation therefor.

[Approved by Governor September 20, 1993. Filed with Secretary of State September 21, 1993.]

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

SECTION 1. Section 15051 of the Health and Safety Code is amended to read:

15051. (a) The hospital governing board or authority shall provide for and require competent and adequate inspection during construction or alteration by an inspector satisfactory to the architect

or structural engineer, or both, and the statewide office. Except as otherwise provided in subdivision (b), the inspector shall act under the direction of the architect or structural engineer, or both, and be responsible to the board or authority. Nothing in this section shall be construed to prohibit any licensed architect, structural engineer, mechanical engineer, electrical engineer, or any facility maintenance personnel, if approved by the statewide office, from performing the duties of an inspector.

(b) If alterations or repairs are to be conducted under the supervision of a professional engineer pursuant to Section 15048, the inspector need only be satisfactory to the statewide office and to the professional engineer, and the inspector shall act under the direction of the professional engineer.

(c) The statewide office shall make an inspection of the hospital buildings and of the work of construction or alteration as in its judgment is necessary or proper for the enforcement of this chapter and the protection of the safety of the public.

Whenever the statewide office finds a violation of this chapter that requires correction, the citation of the violation shall be issued to the hospital governing board or authority in writing and shall include a proper reference to the regulation or statute being violated.

(d) The statewide office shall approve inspectors that shall be limited to the following:

(1) "A" inspectors, who may inspect all phases of construction, including, but not limited to, structural.

(2) "B" inspectors, who may inspect all phases of construction, except structural.

(3) "C" inspectors, who may inspect all phases of construction projects that the statewide office determines do not materially alter the mechanical, electrical, architectural, or structural integrity of the health facility.

(e) (1) As part of its approval process, the statewide office shall initially and periodically examine inspectors by giving either a written examination or a written and oral examination. The statewide office may charge a fee for the examination process calculated to cover its costs. Inspectors who have not passed a written examination shall not be approved by the statewide office until they have successfully passed the written examination. No employee of the statewide office performing field inspections or supervising the field inspections shall be approved as an inspector on any construction project pursuant to this chapter for a period of one year after leaving employment of the statewide office.

(2) The statewide office shall develop regulations for the testing and approval of inspectors.

CHAPTER 423

An act relating to schools.

[Approved by Governor September 20, 1993. Filed with Secretary of State September 21, 1993.]

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

SECTION 1. The local matching share requirement established under Section 17705.5 and any reduction of that requirement that would be applied from a previous year's allowable deduction pursuant to paragraph (1) of subdivision (b) of that section, including any amortization of setup costs, as to a project approved on or after December 1, 1988, under this chapter, are suspended if a school district with average daily attendance less than 1,000 that attempts to acquire land at no cost from the federal government is prevented from acquiring the land because it is or becomes necessary to enact federal legislation to effectuate that acquisition. The period of suspension begins when the necessary federal legislation is introduced in the Congress and ends when the necessary federal legislation is enacted. During the period of suspension, the project is ineligible for any allocation of funds under this chapter for the costs of construction. If the district collects or receives any fees, charges, dedications, or other requirements authorized under Section 53080 of the Government Code, or any fees pursuant to Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code, or both, during the period of suspension, those fees, charges, dedications, or other requirements are to be disregarded in calculating the district's local matching share requirement for this project after the suspension ends.

SEC. 2. Section 1 shall remain in effect only until July 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1994, deletes or extends that date.

CHAPTER 424

An act to add Section 51223.5 to, and to add Article 10.5 (commencing with Section 44645) to Chapter 3 of Part 25 of, the Education Code, relating to education.

[Approved by Governor September 20, 1993. Filed with Secretary of State September 21, 1993.]

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

SECTION 1. Article 10.5 (commencing with Section 44645) is

added to Chapter 3 of Part 25 of the Education Code, to read:

Article 10.5. In-Service Training: Anabolic Steroids

44645. (a) The Legislature hereby finds and declares that the use of anabolic steroids to expedite the physical development and enhance the performance level of secondary school athletes presents a serious health hazard to these pupil athletes.

Therefore it is the intent of the Legislature to encourage county offices of education and school districts that offer in-service training to credentialed staff who provide health education, physical education, or science education to pupils to include, where appropriate, within the in-service training for any one of those subjects new developments in the scientific understanding of anabolic steroids as well as new education techniques directed at preventing the use of anabolic steroids.

(b) It is also the intent of the Legislature that:

(1) Participation in the training be voluntary on the part of the credentialed staff.

(2) To the extent possible, training be provided to a team of educators.

(3) The training be provided by persons with expertise on the effects of anabolic steroids.

(c) It is further the intent of the Legislature that State Department of Education develop guidelines for the provision of in-service training relating to the use of anabolic steroids. In developing and providing the in-service training, county offices of education and school districts are encouraged to cooperate and collaborate with the State Department of Education.

SEC. 2. Section 51223.5 is added to the Education Code, to read:

51223.5. (a) The Legislature hereby finds and declares that the physical fitness and motor development of children in the public elementary schools is of equal importance to that of other elements of the curriculum.

(b) It is, therefore, the intent of the Legislature to encourage each school district maintaining an elementary school composed of any of grades 1 to 8, inclusive, to do one of the following:

(1) Employ a physical education specialist to provide instruction in physical education for each class of grades 1 to 8, inclusive, within any elementary school in the district for a total period of time of not less than 200 minutes each 10 school days, exclusive of recesses and the lunch period, as set forth in Section 51223.

(2) Provide each teacher providing instruction in physical education to any of grades 1 to 8, inclusive, within any elementary school in the district with yearly theoretical practical training in developmental physical education, as set forth in the Physical Education Framework adopted by the State Department of Education pursuant to Section 33350, except that any teacher who has successfully completed one college level course in elementary

physical education shall not be subject to this paragraph.

CHAPTER 425

An act to add and repeal Section 1597.41 of the Health and Safety Code, relating to day care.

[Approved by Governor September 20, 1993. Filed with Secretary of State September 21, 1993.]

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

SECTION 1. Section 1597.41 is added to the Health and Safety Code, to read:

1597.41. (a) The State Director of Social Services shall authorize the Counties of Placer, Fresno, San Diego, San Luis Obispo, and Ventura to operate a pilot project, pursuant to this section, for a period not to extend beyond January 1, 1996. The purpose of the pilot project is to test the feasibility of permitting two additional schoolage children to be cared for in a family day care home.

(b) Notwithstanding Section 1596.78, upon authorization from the State Director of Social Services pursuant to subdivision (a), family day care homes in the pilot project counties shall be subject to the following limits on capacity:

(1) A large family day care home may provide family day care to 7 to 12 children, inclusive, or up to 14 children, inclusive, if two of the children are six years of age or older. Children under the age of 10 years who reside in the home, as defined in regulations, shall be counted for purposes of these limits.

(2) A small family day care home may provide family day care to six or fewer children, or eight or fewer children if two of the children are six years of age or older. Children under the age of 10 years who reside in the home, as defined in regulations, shall be counted for purposes of these limits.

(c) Any family day care provider who opts to care for children under the higher limits described in subdivision (b) shall notify the department of his or her intention prior to accepting the two additional children for care. Upon request of a local planning agency, local zoning agency, or similar local agency, the department shall inform the agency about whether or not a specified provider is participating in the pilot project.

(d) By March 30, 1995, the Assembly Office of Research shall submit evaluation of the pilot project to the Assembly Human Services Committee and the Senate Health and Human Services Committee of the Legislature. In preparing the evaluation, the Assembly Office of Research shall consult with representatives of the Child Development Programs Advisory Committee, the State Department of Education, cities or other local agencies in the pilot

counties, the State Fire Marshal, family day care provider associations, and other associations representing the interests of parents and children. It is the intent of the Legislature for the Assembly Office of Research to contact and utilize colleges and universities located within each pilot county to assist with the collection of data, to formulate surveys and evaluations, and to work with the local child care community to establish and conduct each pilot project. The evaluation shall include, but not be limited to, all of the following:

(1) The number of family day care homes that participate in the pilot project, by county and by size of home.

(2) The number of additional children cared for as a result of the pilot project, by county and by size of home.

(3) Problems encountered by providers, parents, or other parties with respect to licensing and zoning requirements, and barriers to participation in the pilot project encountered by providers.

(4) Comments from providers, local agencies, and parents about the effectiveness, feasibility, and other aspects of the pilot project. The report shall include an assessment of the impact of the pilot project on local zoning practices and policies.

(5) The effect of provider training and education on the ability of providers to care for additional children, and on the quality of care provided to all the children in the family day care home.

(6) The effect on the quality of care of the addition of two schoolage children independent of other major program changes.

(7) The health and safety impacts, including fire safety, arising from the addition of two schoolage children.

(8) The impact of the pilot project on increasing the capacity for schoolage child care, and on the supply of total child care capacity in active family day care homes.

(9) The impact of the pilot project on local family day care zoning practices and enforcement of state fire codes applicable to family day care homes.

(10) Recommendations as to whether the pilot project should be expanded to other areas of the state, and the reasons for those recommendations.

(e) The director, in consultation with the Child Development Programs Advisory Committee and the State Department of Education, shall determine the standardized data the Assembly Office of Research shall collect from the pilot project counties for the evaluation in order to ensure consistency. In determining what standardized data shall be collected pertaining to quality issues, the director shall consult with the Assembly Office of Research and may consult with other experts in the field of child care quality. The director shall notify the counties of what data is to be collected either within 60 days of establishment of the pilot program or, if the program has been established prior to January 1, 1994, at the time the new pilot project counties are notified of this requirement, and shall cooperate with the Assembly Office of Research in collecting the

data. The participating counties shall provide the standardized data to the Assembly Office of Research, the department, and the Child Development Programs Advisory Committee.

(f) For purposes of zoning, only for pilot project family day care homes, small family day care homes with the additional two schoolage children shall still be considered small family day care homes, and large family day care homes with the additional two schoolage children shall still be considered large family day care homes.

(g) For purposes of the applicable fire safety regulations set forth in the California Building Standards Code, and only for pilot project family day care homes, large family day care homes serving an additional two schoolage children, totaling 13 or 14 children, shall be considered as serving only 12 children.

(h) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1996, deletes or extends that date.

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

CHAPTER 426

An act to amend Section 44370 of, to repeal and add Sections 44371, 44372, 44373, and 44374 of, and to repeal Sections 44375 and 44376 of, the Education Code, relating to education.

[Approved by Governor September 20, 1993. Filed with Secretary of State September 21, 1993.]

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

SECTION 1. Section 44370 of the Education Code is amended to read:

44370. The Legislature finds and declares that the competence and performance of professional educators depends in part on the quality of their academic and professional preparation. The Legislature recognizes that standards of quality in collegiate preparation complement standards of candidate competence and

performance, and that general standards and criteria regarding the overall quality of a candidate's preparation are as essential as the assessment of the candidate's competence and performance.

SEC. 2. Section 44371 of the Education Code is repealed.

SEC. 3. Section 44371 is added to the Education Code, to read:

44371. (a) The system for accreditation of educator preparation shall do all of the following:

(1) Concentrate on the overall quality of educator preparation in credential programs.

(2) Hold professional elementary, secondary, and postsecondary educators responsible for quality in the preparation of professional practitioners.

(3) Contribute to improvements in educator preparation and recognize excellence in preparation programs and institutions.

(4) Replace the prior system of program approval, as established by the Teacher Preparation and Licensing Act of 1970.

(5) Be governed by an accreditation framework that sets forth the policies of the Commission on Teacher Credentialing regarding the accreditation of educator preparation.

(b) The accreditation framework shall do all of the following:

(1) Establish broad, flexible policies and standards for accreditation of educator preparation.

(2) Define the accreditation responsibilities, authority, and roles of the Commission on Teacher Credentialing and the Committee on Accreditation.

(3) Establish an accreditation system that is efficient and cost-effective.

(4) Require that accreditation decisions be based on sufficient, reliable evidence about the quality of educator preparation.

SEC. 4. Section 44372 of the Education Code is repealed.

SEC. 5. Section 44372 is added to the Education Code, to read:

44372. The powers and duties of the Commission on Teacher Credentialing regarding the accreditation system shall include the following:

(a) Adopt and implement an accreditation framework, which sets forth the policies of the commission regarding the accreditation of educator preparation in California.

(b) Establish and modify credential-specific standards, experimental program standards, and alternative program standards, as defined in the adopted accreditation framework.

(c) Rule on the eligibility of an applicant for accreditation when the applying institution has not previously prepared educators for state certification in California, pursuant to subdivision (a) of Section 44227.

(d) Appoint and reappoint the members of the Committee on Accreditation, in accordance with Section 44373, by selecting among nominees submitted by a panel of distinguished educators.

(e) Review periodic accreditation reports by the Committee on Accreditation, and refer accreditation issues and concerns to the

committee for its examination and response.

(f) Hear and resolve appeals of accreditation decisions, pursuant to subdivision (e) of Section 44374.

(g) Allocate resources annually for implementation of the accreditation system.

(h) With the Committee on Accreditation, jointly design an evaluation of accreditation policies and their implementation, and jointly select an external evaluator to conduct the evaluation, in accordance with Section 8 of the accreditation framework that was in effect on June 30, 1993.

(i) Modify the accreditation framework in accordance with Section 8 of the framework that was in effect on June 30, 1993.

(j) Inform and advise the Legislature regarding statutory issues related to accreditation, and submit legislative recommendations, after considering the advice of the Committee on Accreditation, educational institutions, and professional organizations.

SEC. 6. Section 44373 of the Education Code is repealed.

SEC. 7. Section 44373 is added to the Education Code, to read:

44373. (a) There is hereby established the Committee on Accreditation consisting of 12 members selected for their distinguished records of accomplishment in education. Six members shall be from postsecondary education institutions, and six shall be certificated professionals in public schools, school districts, or county offices of education in California. No member shall serve on the committee as a representative of any organization or institution. Membership shall be, to the maximum extent possible, balanced in terms of ethnicity, gender, and geographic regions. The committee shall include members from elementary and secondary schools, and members from public and private institutions of postsecondary education.

(b) The terms of committee members shall be in accordance with the accreditation framework. Appointment of the initial committee members shall be from nominees submitted by a panel of distinguished educators, who are named by a consensus of the commission and the accreditation advisory council, pursuant to Section 44371, as that section read on December 31, 1993. Appointment of subsequent committee members shall be from nominees submitted by a distinguished panel named by a consensus of the commission and the Committee on Accreditation. For each committee position to be filled by the commission, the panel shall submit two highly qualified nominees.

(c) The committee shall do, but shall not be limited to doing, all of the following:

(1) Make decisions about the accreditation of educator preparation. The committee's decisionmaking process shall be in accordance with the accreditation framework.

(2) Make decisions about the initial accreditation of new programs of educator preparation in accordance with procedures established by the committee.

(3) Determine the comparability of standards submitted by applicants with those adopted by the commission, in accordance with the accreditation framework.

(4) Adopt guidelines for accreditation reviews, and monitor the performance of accreditation teams and other aspects of the accreditation system.

(5) Present an annual accreditation report to the commission and respond to accreditation issues and concerns referred to the committee by the commission.

SEC. 8. Section 44374 of the Education Code is repealed.

SEC. 9. Section 44374 is added to the Education Code, to read:

44374. (a) The accreditation framework shall include common standards that relate to aspects of program quality that are the same for all credential programs. The framework shall also include multiple options for program standards.

(b) The accreditation framework shall include provisions regarding well-trained accreditation teams whose members shall be drawn from a pool of California college and university faculty members and administrators, elementary and secondary school teachers and other certificated professionals, and local school board members. For each accreditation visit there shall be one team, whose size, composition, and expertise shall be constituted according to the accreditation framework.

(c) An accreditation team shall present its report and recommendations to the Committee on Accreditation in accordance with the accreditation framework. The committee shall consider the accreditation team report and recommendations, and shall also consider evidence, which may be submitted by the institution, that the team demonstrated bias or acted arbitrarily or capriciously or contrary to the policies of the accreditation framework or the procedural guidelines of the committee.

(d) The Committee on Accreditation shall make a single decision to accredit, to accredit with stipulations, or to deny accreditation to an institution's credential programs, pursuant to Section 44373 and the accreditation framework.

(e) An institution has the right to appeal to the commission if the procedures or decisions of an accreditation team or the Committee on Accreditation are arbitrary, capricious, unfair, or contrary to the policies of the commission or the procedural guidelines of the committee. An institution also has the right to recommend changes in the accreditation policies of the commission, which shall be considered by the commission in consultation with the executive director and the Committee on Accreditation.

(f) At the request of an institution, the accreditation of an education unit or a specific program by a national accrediting body shall substitute for state accreditation provided that the national accrediting body has satisfied the applicable conditions set forth in the accreditation framework.

SEC. 10. Section 44375 of the Education Code is repealed.

SEC. 11. Section 44376 of the Education Code is repealed.

CHAPTER 427

An act to add Section 594.4 to the Penal Code, relating to crimes.

[Approved by Governor September 21, 1993. Filed with Secretary of State September 22, 1993.]

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

SECTION 1. Section 594.4 is added to the Penal Code, to read:

594.4. (a) Any person who willfully and maliciously injects into or throws upon, or otherwise defaces, damages, destroys, or contaminates, any structure with butyric acid, or any other similar noxious or caustic chemical or substance, is guilty of a public offense, punishable by imprisonment in the state prison or in a county jail, by a fine as specified in subdivision (b), or by both that imprisonment and fine.

(b) (1) If the amount of the defacement, damage, destruction, or contamination is fifty thousand dollars ($50,000) or more, by a fine of not more than fifty thousand dollars ($50,000).

(2) If the amount of the defacement, damage, destruction, or contamination is five thousand dollars ($5,000) or more, but less than fifty thousand dollars ($50,000), by a fine of not more than ten thousand dollars ($10,000).

(3) If the amount of defacement, damage, destruction, or contamination is one thousand dollars ($1,000) or more, but less than five thousand dollars ($5,000), by a fine of not more than five thousand dollars ($5,000).

(4) If the amount of the defacement, damage, destruction, or contamination is less than one thousand dollars ($1,000), by a fine of not more than one thousand dollars ($1,000).

(c) For purposes of this section, "structure" includes any house or other building being used at the time of the offense for a dwelling or for commercial purposes.

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

CHAPTER 428

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

[Approved by Governor September 21, 1993. Filed with Secretary of State September 22, 1993.]

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

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

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

(a) (1) (A) Any peace officer, listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, other honorably retired peace officers who during the course and scope of their employment as peace officers were authorized to, and did, carry firearms, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the agency from which the officer has retired. The issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to this subdivision.

(B) Any officer, except an officer listed in Section 830.1, 830.2, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have an endorsement on the identification stating that the issuing agency approves the officer's carrying of a concealed firearm.

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

(D) A certificate issued pursuant to this paragraph for persons who are not listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 or for persons retiring after January 1, 1981, shall be in the following format: it shall be on a 2x3 inch card, bear the photograph of the retiree, the retiree's name, address, date of birth, the date that the retiree retired, name and address of the agency from which the retiree retired, have stamped on it the endorsement

"CCW Approved" and the date the endorsement is to be renewed.

(E) For purposes of this section and Section 12031, "CCW" means "carry concealed weapons."

(2) A retired peace officer, except an officer listed in Section 830.1, 830.2, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall petition the issuing agency for the renewal of his or her privilege to carry a concealed firearm every five years. An honorably retired peace officer listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a concealed firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of that peace officer, or at any time subsequent thereto, deny or revoke, for good cause the retired officer's privilege to carry a concealed firearm. A peace officer who is listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have his or her privilege to carry a concealed firearm denied or revoked by having the agency from which the officer retired stamp on the officer's identification certificate "No CCW privilege."

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

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

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

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

(e) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(f) Members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using pistols, revolvers, or other firearms capable of being concealed upon

the person upon the target ranges, or while going to and from the ranges.

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

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

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

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

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

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

(j) The carrying of a pistol, revolver, or other firearm capable of being concealed upon the person by a person who is authorized to carry that weapon in a concealed manner pursuant to Article 3 (commencing with Section 12050).

SEC. 2. Section 12027 of the Penal Code is amended to read:

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

(a) (1) (A) Any peace officer, listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, other honorably retired peace officers who during the course and scope of their employment as peace officers were authorized to, and did, carry firearms, full-time paid peace officers

of other states and the federal government who are carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the law enforcement agency from which the officer has retired. The issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to this subdivision. As used in this section and Section 12031, the term "honorably retired" includes all peace officers who have qualified for, and have accepted, a service or disability retirement. For purposes of this section and Section 12031, the term 'honorably retired" does not include an officer who has agreed to a service retirement in lieu of termination.

(B) Any officer, except an officer listed in Section 830.1, 830.2, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a concealed firearm.

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

(D) A certificate issued pursuant to this paragraph for persons who are not listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 or for persons retiring after January 1, 1981, shall be in the following format: it shall be on a 2×3 inch card, bear the photograph of the retiree, the retiree's name, address, date of birth, the date that the retiree retired, name and address of the agency from which the retiree retired, have stamped on it the endorsement "CCW Approved" and the date the endorsement is to be renewed.

(E) For purposes of this section and Section 12031, "CCW" means "carry concealed weapons."

(2) A retired peace officer, except an officer listed in Section 830.1, 830.2, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall petition the issuing agency for the renewal of his or her privilege to carry a concealed firearm every five years. An honorably retired peace officer listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a concealed firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of that peace officer, or at any time subsequent thereto, deny or revoke, for good

cause the retired officer's privilege to carry a concealed firearm. A peace officer who is listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have his or her privilege to carry a concealed firearm denied or revoked by having the agency from which the officer retired stamp on the officer's identification certificate "No CCW privilege."

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

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

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

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

(e) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(f) Members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using pistols, revolvers, or other firearms capable of being concealed upon the person upon the target ranges, or while going to and from the ranges.

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

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

(i) Upon approval of the sheriff of the county in which they reside, honorably retired federal officers or agents of federal law enforcement agencies, including, but not limited to, the Federal Bureau of Investigation, the Secret Service, the United States

Customs Service, the Federal Bureau of Alcohol, Tobacco, and Firearms, the Federal Bureau of Narcotics, the Drug Enforcement Administration, the United States Border Patrol, and officers or agents of the Internal Revenue Service who were authorized to carry weapons while on duty, who were assigned to duty within the state for a period of not less than one year, or who retired from active service in the state.

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

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

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

(j) The carrying of a pistol, revolver, or other firearm capable of being concealed upon the person by a person who is authorized to carry that weapon in a concealed manner pursuant to Article 3 (commencing with Section 12050).

SEC. 3. Section 12027.1 of the Penal Code is amended to read:

12027.1. (a) (1) (A) (i) Any peace officer employed by an agency and listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired after January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a concealed and loaded firearm.

(ii) Any peace officer listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, is authorized to carry a concealed and loaded firearm if the agency issued the officer an identification certificate and the certificate has not been stamped as specified in paragraph (2) of subdivision (a) of Section 12027.

(iii) Peace officers not listed in clause (i) or (ii) who were authorized to, and did, carry firearms during the course and scope of their employment as peace officers, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a concealed and loaded firearm.

(B) An identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement on the certificate may be revoked or denied by the issuing agency only upon a showing

of good cause. Good cause shall be determined at a hearing, as specified in subdivision (d).

(2) A retired peace officer may have his or her privilege to carry a concealed and loaded firearm revoked or denied by violating any departmental rule, or state or federal law that, if violated by an officer on active duty, would result in that officer's arrest, suspension, or removal from the agency.

(b) (1) An identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement may be revoked or denied by the issuing agency only upon a showing of good cause. Good cause shall be determined at a hearing, as specified in subdivision (d).

(2) An identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement may be revoked only after a hearing, as specified in subdivision (d). Any retired peace officer whose identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement is to be revoked shall have 15 days to respond to the notice of the hearing. Notice of the hearing shall be served either personally on the retiree or sent by first-class mail, postage prepaid, return receipt requested to the retiree's last known place of residence. Upon the date the agency receives the signed registered receipt or upon the date the notice is served personally on the retiree, the retiree shall have 15 days to respond to the notification. A retired peace officer who fails to respond to the notice of the hearing shall forfeit his or her right to respond.

(3) An identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement may be denied prior to a hearing. If a hearing is not conducted prior to the denial of an endorsement, a retired peace officer, within 15 days of the denial, shall have the right to request a hearing. A retired peace officer who fails to request a hearing pursuant to this paragraph shall forfeit his or her right to the hearing.

(c) A retired peace officer, when notified of the revocation of his or her privilege to carry a concealed and loaded firearm, after the hearing, or upon forfeiting his or her right to a hearing, shall immediately surrender to the issuing agency his or her identification certificate. The issuing agency shall reissue a new identification certificate without an endorsement. However, if the peace officer retired prior to January 1, 1981, and was at the time of his or her retirement a peace officer listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5, the issuing agency shall stamp on the identification certificate "No CCW privilege."

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

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

(e) No peace officer who is retired after January 1, 1989, because of a psychological disability shall be issued an endorsement to carry a concealed and loaded firearm pursuant to this section.

SEC. 4. Section 12031 of the Penal Code, as amended by Section 117 of Chapter 163 of the Statutes of 1992, is amended to read:

12031. (a) (1) Every person who carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory is guilty of a misdemeanor.

(2) Notwithstanding paragraphs (2) and (3) of subdivision (a) of Section 836, a peace officer may make an arrest without a warrant:

(A) When the person arrested has violated this section, although not in the officer's presence.

(B) Whenever the officer has reasonable cause to believe that the person to be arrested has violated this section, whether or not this section has, in fact, been violated.

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

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

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

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

retired. The issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to this paragraph and paragraph (3).

Any officer, except an officer listed in Section 830.1, 830.2, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a loaded firearm.

No endorsement or renewal endorsement issued pursuant to paragraph (2) shall be effective unless it is in the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027, except that any peace officer listed in subdivision (f) of Section 830.2 or in subdivision (c) of Section 830.5, who is retired between January 2, 1981, and on or before December 31, 1988, and who is authorized to carry a loaded firearm pursuant to this section, shall not be required to have an endorsement in the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027 until the time of the issuance, on or after January 1, 1989, of a renewal endorsement pursuant to paragraph (2).

(2) A retired peace officer, except an officer listed in Section 830.1, 830.2, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall petition the issuing agency for renewal of his or her privilege to carry a loaded firearm every five years. An honorably retired peace officer listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a loaded firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a loaded firearm. A peace officer who is listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have his or her privilege to carry a loaded firearm denied or revoked by having the agency from which the officer retired stamp on the officer's identification certificate "No CCW privilege."

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

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

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

(6) The carrying of pistols, revolvers, or other firearms capable of being concealed upon the person by persons who are authorized to carry those weapons pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

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

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

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

Upon approval, the sheriff shall issue a permit to the retired federal officer or agent indicating that he or she may carry a loaded firearm in accordance with this paragraph. The permit shall be valid for a period not exceeding five years, shall be carried by the retiree while carrying a loaded firearm, and may be revoked for good cause.

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

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

(1) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also, under the express terms of the charter, (A) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (B) are not less than 18 years of age nor more than 40 years of age, (C) possess physical qualifications prescribed by the commission, and (D) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

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

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

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

(1) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

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

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

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

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

(6) Uniformed employees of private patrol operators and private investigators licensed pursuant to Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions Code

while acting within the course and scope of their employment.

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

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

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

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

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

(j) (1) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property. As used in this subdivision, "immediate" means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

(2) A violation of this section is justifiable when a person who possesses a firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This paragraph may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application

of current statutory or judicial authority to apply this or other justifications to defendants charged with violating Section 12025 or of committing other similar offenses.

Upon trial for violating this section, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

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

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

SEC. 5. Section 12031 of the Penal Code, as amended by Section 117 of Chapter 163 of the Statutes of 1992, is amended to read:

12031. (a) (1) Every person who carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory is guilty of a misdemeanor.

(2) Notwithstanding paragraphs (2) and (3) of subdivision (a) of Section 836, a peace officer may make an arrest without a warrant:

(A) When the person arrested has violated this section, although not in the officer's presence.

(B) Whenever the officer has reasonable cause to believe that the person to be arrested has violated this section, whether or not this section has, in fact, been violated.

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

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

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

(1) Peace officers listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, other honorably retired peace officers who during the course and scope of their employment as peace officers were authorized to, and did,

carry firearms, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any of those officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the law enforcement agency from which the officer has retired. The issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to this paragraph and paragraph (3).

Any officer, except an officer listed in Section 830.1, 830.2, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a loaded firearm.

No endorsement or renewal endorsement issued pursuant to paragraph (2) shall be effective unless it is in the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027, except that any peace officer listed in subdivision (f) of Section 830.2 or in subdivision (c) of Section 830.5, who is retired between January 2, 1981, and on or before December 31, 1988, and who is authorized to carry a loaded firearm pursuant to this section, shall not be required to have an endorsement in the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027 until the time of the issuance, on or after January 1, 1989, of a renewal endorsement pursuant to paragraph (2).

(2) A retired peace officer, except an officer listed in Section 830.1, 830.2, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall petition the issuing agency for renewal of his or her privilege to carry a loaded firearm every five years. An honorably retired peace officer listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a loaded firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a loaded firearm. A peace officer who is listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who is retired prior to January 1, 1981, shall have his or her privilege to carry a loaded firearm denied or revoked by having the agency from which the officer retired stamp on the officer's identification certificate "No CCW privilege."

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

honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

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

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

(6) The carrying of pistols, revolvers, or other firearms capable of being concealed upon the person by persons who are authorized to carry those weapons pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

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

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

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

Upon approval, the sheriff shall issue a permit to the retired federal officer or agent indicating that he or she may carry a loaded firearm in accordance with this paragraph. The permit shall be valid for a period not exceeding five years, shall be carried by the retiree while carrying a loaded firearm, and may be revoked for good cause.

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

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

(1) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also, under the express terms of the charter,

(A) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (B) are not less than 18 years of age or more than 40 years of age, (C) possess physical qualifications prescribed by the commission, and (D) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

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

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

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

(1) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

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

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

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

(5) Uniformed security guards, regularly employed and compensated in that capacity by persons engaged in any lawful business, and uniformed alarm agents employed by an alarm company operator, while actually engaged in protecting and preserving the property of their employers or on duty or en route to or from their residences or their places of employment, and security

guards and alarm agents en route to or from their residences or employer-required range training. Nothing in this paragraph shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their names.

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

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

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

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

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

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

(j) (1) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property. As used in this subdivision, "immediate" means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

(2) A violation of this section is justifiable when a person who possesses a firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current

restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This paragraph may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to defendants charged with violating Section 12025 or of committing other similar offenses.

Upon trial for violating this section, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

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

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

SEC. 6. Section 2 of this bill incorporates amendments to Section 12027 of the Penal Code proposed by both this bill and AB 578. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 12027 of the Penal Code, and (3) this bill is enacted after AB 578, in which case Section 1 of this bill shall not become operative.

SEC. 7. Section 5 of this bill incorporates amendments to Section 12031 of the Penal Code proposed by both this bill and AB 578. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 12031 of the Penal Code, and (3) this bill is enacted after AB 578, in which case Section 4 of this bill shall not become operative.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 429

An act to amend Section 14669.5 of, and to add Section 14669.8 to, the Government Code, relating to state real property, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1993. Filed with Secretary of State September 22, 1993.]

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

SECTION 1. Section 14669.5 of the Government Code is amended to read:

14669.5. (a) Notwithstanding any other provisions of law, the Director of General Services may enter into an additional amendment to the existing joint powers agreement with the Community Redevelopment Agency of the City of Los Angeles dated June 30, 1982, in connection with the financing, planning, acquisition, equipping, furnishing, and construction or renovation of an additional office building or buildings and parking facilities in the City of Los Angeles in near proximity to the Ronald Reagan State Building and in connection therewith may enter into a lease-purchase agreement or agreements, an agreement for the appointment of a bond trustee, and an agreement or agreements for the Department of General Services to act as agent for acquisition, planning, and construction or renovation matters, each of which agreements shall be with the joint powers authority created under the joint powers agreement. The amendment to the existing joint powers agreement shall provide that any authorization under the joint powers agreement for the joint powers authority to acquire property by means of condemnation proceedings shall not include the power to condemn the property on which was located, as of January 1, 1991, that certain homeless women's housing and day care center commonly known as the Downtown Women's Center, which property is legally described as set forth below. The lease-purchase agreement or agreements may provide for space to be used for private commercial purposes. The director shall notify the chairperson of the Joint Legislative Budget Committee or his or her designee, and the chairpersons of the committees in each house which consider appropriations, of his or her intention to execute the lease-purchase agreement or agreements at least 20 days prior to its execution.

The property referred to above is legally described as follows:

THAT PORTION OF THE PROPERTY OF C.E. THOM, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 72, PAGE 45 OF MISCELLANEOUS RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS

FOLLOWS: BEGINNING IN THE NORTHWEST LINE OF LOS ANGELES STREET, 77 FEET WIDE, AS ESTABLISHED BY THE CITY ENGINEER OF SAID CITY, DISTANT THEREON SOUTH 38 DEGREES 41 FEET 30 INCHES WEST 219.30 FEET FROM THE SOUTHWEST LINE OF THIRD STREET, 60 FEET WIDE, AS ESTABLISHED BY SAID ENGINEER; THENCE NORTH 54 DEGREES 24 FEET WEST 124.05 FEET TO THE SOUTHEAST LINE OF DOMITILA COHN PANORAMA PROPERTY AS PER MAP RECORDED IN BOOK 12, PAGE 161 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID LINE SOUTH 34 DEGREES 05 FEET WEST 25.79 FEET TO AN ANGLE POINT THEREIN; THENCE ALONG SAID LINE SOUTH 51 DEGREES 45 FEET WEST 16.54 FEET TO THE NORTHEAST LINE OF LAND DESCRIBED IN DEED RECORDED IN BOOK 3746, PAGE 101 OF DEEDS, RECORDS OF SAID COUNTY; THENCE ALONG SAID NORTHEAST LINE SOUTH 43 DEGREES 50 FEET EAST 126.61 FEET TO SAID NORTHWEST LINE OF LOS ANGELES STREET; THENCE ALONG SAID STREET, NORTH 38 DEGREES 41 FEET 30 INCHES EAST 65 FEET TO THE POINT OF BEGINNING. TOGETHER WITH: THAT PORTION OF THE PROPERTY OF C.E. THOM, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 72, PAGE 45 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF THE BAKER TRACT, AS PER MAP RECORDED IN BOOK 5, PAGE 459, MISCELLANEOUS RECORDS OF SAID COUNTY, WITH THE WESTERLY LINE OF LOS ANGELES STREET, AS WIDENED BY DECREE OF CONDEMNATION RECORDED IN BOOK 2088, PAGE 256 OF DEEDS; THENCE NORTH 38 DEGREES 35 FEET EAST ALONG SAID LINE OF LOS ANGELES STREET, 50.45 FEET; THENCE NORTH 43 DEGREES 40 FEET WEST, PARALLEL WITH SAID NORTHERLY LINE OF THE BAKER TRACT, AND 50 FEET AT RIGHT ANGLES THEREFROM, 130 FEET, MORE OR LESS, TO A POINT IN THE SOUTHEASTERLY LINE OF DOMITILA COHN PANORAMA PROPERTY, AS PER MAP RECORDED IN BOOK 12, PAGE 161 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH 51 DEGREES 45 FEET WEST ALONG SAID SOUTHEASTERLY LINE, 50 FEET, MORE OR LESS, TO SAID NORTHERLY LINE OF SAID BAKER TRACT; THENCE SOUTH 43 DEGREES 40 FEET EAST ALONG SAID NORTHERLY LINE OF SAID BAKER TRACT, 138 FEET TO THE POINT OF BEGINNING.

(b) In as much as it is in the best interest of the people of the State of California to consolidate state offices in the City of Los Angeles as

described in subdivision (a), at the earliest opportunity, a "design-build" concept may be utilized in meeting the objective of this section.

(c) Notwithstanding any other provision of law, the joint powers authority described in subdivision (a) shall have the authority to borrow from the Pooled Money Investment Account as provided in Sections 16312 and 16313.

SEC. 2. Section 14669.8 is added to the Government Code, to read:

14669.8. (a) Notwithstanding any other provision of law, the Director of General Services may enter into an amendment to the existing joint powers agreement with the San Francisco Redevelopment Agency in connection with the redevelopment of the 350 McAllister/455 Golden Gate block in the City and County of San Francisco. The redevelopment shall include, but not be limited to, demolition of existing structures, renovation, financing, planning, acquisition, construction and equipping, and furnishing of new state office buildings and parking facilities, and any betterments, improvements, and facilities related thereto, in the San Francisco Civic Center Area. In connection therewith, the director may enter into a lease-purchase agreement, an agreement for the appointment of a bond trustee, any other documents and agreements in connection with the financing by sale of bonds or otherwise of the development, and an agreement for the department to act as agent for acquisition, planning, and construction matters, each of which agreements shall be with the joint powers authority created under the joint powers agreement. In connection with the development of any agreements authorized by this section or any work or expenses related thereto, the joint powers authority may use any funds lawfully available to it for those purposes, and the department is empowered to use and expend those funds in accordance with the terms of any agreement between the department and the joint powers authority for the carrying out of the works on the development. The Treasurer shall be agent for sale, as defined in Chapter 9 (commencing with Section 5700) of Division 6 of Title 1, for any financing authorized by this section.

(b) In as much as it is in the best interest of the people of the State of California to consolidate state offices in the San Francisco Civic Center Area as described in subdivision (a), at the earliest opportunity, a "design-build" concept may be utilized in meeting the objective of this section.

(c) Notwithstanding any other provision of law, the joint powers authority described in subdivision (a) shall have the authority to borrow from the Pooled Money Investment Account as provided in Sections 16312 and 16313.

SEC. 3. Notwithstanding any other provision of law, the Director of General Services may sell or exchange, based on current market value and upon any terms and conditions, and with any reservations and exceptions, deemed by the director to be in the state's best

interest, the state-owned property, together with improvements, located at 525 Golden Gate Avenue in the City of San Francisco. The net proceeds from the sale or exchange shall be deposited in the General Fund and be available for appropriation in accordance with Section 15863 of the Government Code.

SEC. 4. The Legislature hereby finds and declares the following:

(a) Based upon information contained in a statewide property inventory, the state has substantial real estate needs and resources.

(b) The Department of General Services has developed a San Francisco/Oakland State Facilities Plan, that utilizes the information contained in the inventory to create a framework of management principles and strategies to guide the state's real estate decisions through the next 10 years. The plan incorporates numerous strategies that consolidate state agencies, reduces the number of leased facilities, creates a strong state presence in San Francisco, and improves access to the state's clientele base.

(c) The state's real estate needs and the satisfaction of those needs, whether by redeployment of existing state property, acquisition, leasing, or construction, require thoughtful strategic planning and the coordinated effort of all departments.

SEC. 5. It is the intent of the Legislature to support the recommendations of the San Francisco/Oakland State Facilities Plan. With respect to the San Francisco Civic Center portion of the plan, it is the further intent of the Legislature that the Department of General Services utilize the following parameters for reviewing and implementing real estate and asset management decisions:

(a) Maintain a strong presence of state offices in San Francisco by maintaining the location of the current statewide-serving agencies and future plans to site additional agency offices in the San Francisco Civic Center.

(b) Maintain the location of the local serving general offices in the downtown or neighborhood areas.

(c) Consolidate San Francisco general office space in the civic center.

(d) Maximize the number of state offices housed in state-owned buildings to ensure that the significant long-term savings from the occupancy of owned buildings accrues to the state.

(e) Consider the historic value and traditional use of 350 McAllister Street to ensure that rehabilitation of this asset is sensitive to those issues.

(f) Ensure that the full value of the state's real estate assets are realized through programs for the intensification of development on appropriate lands or the disposition of surplus lands, or both.

(g) Ensure that the public is well-served in the noncentral business district areas through the creation of consolidated service centers.

SEC. 6. The Director of General Services may lease any state-owned real properties that are required to meet the intent of this act to either the Los Angeles or San Francisco joint powers

authority for a term commensurate with any bond issue.

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

In order for the financing and construction of state office and parking facilities to commence as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 430

An act to add Sections 14016, 14669.11, 14669.12, and 15819.32 to, and to repeal and add Section 14669.9 of, the Government Code, and to amend Item 1760-301-768 of Section 2.00 of the Budget Act of 1993, relating to state real property, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1993. Filed with Secretary of State September 22, 1993.]

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

SECTION 1. Section 14016 is added to the Government Code, to read:

14016. (a) The Director of General Services, as agent for the Department of Transportation, may enter into an agreement to purchase, lease-purchase, or lease with an option to purchase or exchange real property in the City of San Bernardino for the purpose of providing office and parking facilities, and any other improvements, betterments, and facilities related thereto, in order to allow consolidation of the offices of the Department of Transportation in the Riverside/San Bernardino region.

(b) The Department of Transportation shall take necessary actions to ensure that its annual budget includes all payments which may be necessary to satisfy the obligation for the office and parking facilities authorized pursuant to subdivision (a).

(c) Following the procurement and occupancy of the building and facilities described in subdivision (a), the Department of Transportation may lease or sell the office building at 247 West 3rd Street in the City of San Bernardino. The net proceeds of that lease or sale shall be applied toward any obligations undertaken pursuant to subdivision (a).

(d) Notwithstanding subdivision (a), the office and parking facilities obtained by the Department of General Services pursuant to subdivision (a) shall be and remain under the jurisdiction and control of, and shall be operated and maintained by, the Department of Transportation. Construction or acquisition of any office and parking facilities utilizing the financing methods authorized by

subdivision (a) shall be done by the Department of General Services as agent of the Department of Transportation. The Department of General Services, in consultation with the Department of Transportation, may contract for design, design/build, and construction, construction management, and other services related to the design and construction of the office and parking facilities obtained pursuant to subdivision (a).

SEC. 2. Section 14669.9 of the Government Code is repealed.

SEC. 3. Section 14669.9 is added to the Government Code, to read:

14669.9. The legislature hereby finds and declares the following:

(a) Based upon information contained in a statewide property inventory, the state has both substantial real estate needs and resources.

(b) The Department of General Services has developed a Riverside/San Bernardino Regional Facilities Study that utilizes the information contained in the inventory to create a framework of management principles and strategies to guide the state's real estate decisions through the next 10 years. The plan incorporates strategies that consolidate state agencies, reduce the number of leased facilities, create a strong state presence in Riverside and San Bernardino, and improve access to the state's clientele base.

(c) The state's real estate needs and the satisfaction of those needs, whether by redevelopment of existing state property, acquisition, leasing or construction, require thoughtful strategic planning and the coordinated effort of all departments.

SEC. 4. Section 14669.11 is added to the Government Code, to read:

14669.11. Notwithstanding any other provision of law, the Director of General Services may sell or exchange, based on current market value and upon any terms and conditions, and with any reservations and exceptions, deemed by the director to be in the state's best interests, the state-owned property consisting of one city block, bounded by Jackson, Alice, 11th, and 12th streets in the City of Oakland. The net proceeds, if any, from the sale or exchange shall be deposited in the General Fund and be available for appropriation in accordance with Section 15863 of the Government Code.

SEC. 5. Section 14669.12 is added to the Government Code, to read:

14669.12. (a) Notwithstanding any other provision of law, the Director of General Services may enter into an amendment to the existing joint powers agreement with the Oakland Redevelopment Agency in connection with the development of approximately 700,000 gross usable square feet of new state-owned office space in the City of Oakland. This development shall include, but not be limited to, the financing, planning, acquisition, construction, and equipping and furnishing of new state office buildings and parking facilities, and any betterments, improvements, and facilities related thereto, in the City of Oakland. The state office building and parking

facility in the City of Oakland developed pursuant to this subdivision shall be named and shall be known as the Elihu M. Harris Building.

(b) In connection with the development described in subdivision (a), the Director of General Services may enter into a lease-purchase agreement, an agreement for the appointment of a bond trustee, and other documents and agreements in connection with the financing, by sale of bonds or otherwise, of this development, and an agreement for the Department of General Services to act as agent for acquisition, planning, and construction matters. Each agreement shall be with the joint powers authority created under the joint powers agreement.

(c) In connection with the development or any agreements provided for by this section, or any work or expenses related thereto, the joint powers authority may use any funds lawfully available to it for the purposes of this section, and the Director of General Services is authorized to use and expend these funds in accordance with the terms of any agreement between the director and the joint powers authority for the carrying out of these works on the development.

(d) Inasmuch as it is in the best interest of the people of the State of California to consolidate state offices in the City of Oakland, as well as other San Francisco Bay area locations, at the earliest possible opportunity, a "design-build" concept may be utilized in meeting the objective of this section.

(e) Notwithstanding any other provision of law, the joint powers authority described in this section may borrow from the Pooled Money Investment Account as provided for in Sections 16312 and 16313.

SEC. 6. Section 15819.32 is added to the Government Code, to read:

15819.32. (a) The State Public Works Board may issue revenue bonds, negotiable notes or negotiable bond anticipation notes pursuant to Chapter 5 (commencing with Section 15830) of this part to finance the acquisition of the facilities specified in Sections 14016 and 14669.9.

(b) The amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold shall equal the cost of acquisition, including land, construction, preliminary plans and working drawings, construction management and supervision, other costs relating to the design and construction of the facilities, exercise of any purchase option, and any additional sums necessary to pay interim and permanent financing costs. The additional amount may include interest and a reasonable required reserve fund.

(c) Authorized costs of the facilities, including land acquisition, preliminary plans, working drawings and construction shall not exceed one hundred and seventy-five million dollars ($175,000,000).

(d) The State Public Works Board may authorize the augmentation of the amount authorized by this section subject to the limitations specified in Section 13332.11.

(e) Notwithstanding Section 13340 of the Government Code,

funds derived from the interim and permanent financing or refinancing of the facilities specified in Sections 14016 and 14669.9 are hereby continuously appropriated without regard to fiscal years for these purposes.

SEC. 7. Item 1760-301-768 of Section 2.00 of the Budget Act of 1993 is amended to read:

1760-301-768—For capital outlay, Department of General Services, payable from the Earthquake Safety and Public Buildings Rehabilitation Fund of 1990		3,250,000
Schedule:		
(1.1) 50.30.005.001—Elihu M. Harris Building—Preparation of request for proposal for design-build project and related documents as described in subdivision (d) of Section 14669.12 of the Government Code	1,250,000	
(2.1) 50.40.080.001—San Francisco State Office Buildings (350 McAllister St. and 455 Golden Gate Ave.)—Preparation of request for proposal for design-build project and related documents as described in subdivision (d) of Section 14669.12 of the Government Code	2,000,000	

SEC. 8. It is the intent of the Legislature to support the recommendations of the Riverside/San Bernardino Regional Facilities Plan. With respect to the downtown Riverside and downtown San Bernardino portions of the plan, it is the further intent of the Legislature that the Department of General Services utilize the following parameters for reviewing and implementing real estate and asset management decisions:

(a) Consolidate Riverside general office space to the civic center.

(b) Consolidate San Bernardino general office space to the civic center.

(c) Maximize the number of state offices housed in state-owned buildings to ensure that significant long-term savings from the occupancy of owned buildings accrue to the state.

(d) Ensure that the full value of the state's real estate assets are realized through programs for the intensification of development on appropriate lands or the disposition of surplus lands, or both.

(e) Ensure that the public is well served in the noncentral business district areas through the creation of consolidated service centers.

SEC. 9. Notwithstanding any other provision of law, the Director of General Services may enter into purchase agreements, leases containing options to purchase with an initial purchase price that exceeds two million dollars ($2,000,000) or lease purchase agreements as are deemed necessary in accordance with the regional plan referenced in this act for the purpose of providing office, parking and related facilities to consolidate the operations of state agencies into the Cities of Riverside and San Bernardino. In addition, the director may, through similar agreement, procure new facilities for the Fourth District Court of Appeals in Riverside when the director determines that that move is economically and operationally justified and after consultation with the Justices of the Court.

SEC. 10. Notwithstanding any other provision of law, the Director of General Services may sell, lease or exchange, based on current market value and upon any terms and conditions, and with any reservations and exceptions, deemed by the director to be in the state's best interest, the state-owned property, together with improvements, located at 303 West 3rd Street in the City of San Bernardino. The net proceeds from the sale, lease or exchange shall be applied toward any obligations undertaken by the Director of General Services under Section 6.

SEC. 11. The Legislature hereby finds and declares that it is in the best interest of the people of California to authorize the consolidation of offices of the Department of Transportation in the City of San Bernardino in that this consolidation affords the greatest economic benefit to the department and the state.

SEC. 12. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the financing and construction of state office and parking facilities to commence as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 431

An act to amend Sections 15399.10, 15399.12, 15399.13, 15399.14, and 15399.20 of the Government Code, and to amend Section 25299.52 of the Health and Safety Code, relating to underground storage tanks.

[Approved by Governor September 22, 1993. Filed with Secretary of State September 24, 1993.]

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

SECTION 1. Section 15399.10 of the Government Code is amended to read:

15399.10. (a) "Board" means the State Water Resources Control

Board.

(b) "Loan applicant" means a small business which applies to the department for a loan pursuant to this chapter.

(c) "Tank" means an underground storage tank, as defined in Section 25281 of the Health and Safety Code, used for the purpose of storing petroleum, as defined in Section 25299.21 of the Health and Safety Code. "Tank" also includes vapor recovery systems and dispensers connected to the underground piping and the underground storage tank.

(d) "Department" means the Department of Commerce.

(e) "Project tank" means one or more tanks that would be upgraded, replaced, or removed with loan funds.

SEC. 2. Section 15399.12 of the Government Code, as amended by Chapter 54 of the Statutes of 1993, is amended to read:

15399.12. The department shall only make loan funds available to loan applicants which meet all of the following eligibility requirements:

(a) The loan applicant is a small business, as defined in Section 632 of Title 15 of the United States Code, and in the regulations adopted to implement that section, as specified in Section 121.2 of Title 13 of the Code of Federal Regulations, if the principal office of the business is domiciled in the state, and the officers of the business are domiciled in this state. The department shall give priority to awarding loans to businesses which meet the definition of small business specified in subdivision (c) of Section 14837.

(b) The loan applicant owns or operates a project tank.

(c) Loan funds are not obtainable, upon reasonable terms, from private financial institutions, the California Pollution Control Financing Authority, or any other government agency.

(d) The loan applicant demonstrates the ability to repay the loan, and the availability of adequate collateral to secure the loan.

(e) All tanks owned or operated by the loan applicant are subject to compliance with Chapter 6.7 (commencing with Section 25280) of Division 20 of the Health and Safety Code and the regulations adopted pursuant to that chapter.

(f) The loan applicant has complied, or will comply, with the financial responsibility requirements specified in Section 25299.31 of the Health and Safety Code and the regulations adopted pursuant to this section.

SEC. 3. Section 15399.13 of the Government Code is amended to read:

15399.13. (a) A complete loan application shall include all of the following:

(1) Evidence of eligibility.

(2) An environmental audit, as specified in Section 5268 of Title 10 of the California Code of Regulations.

(3) Financial and legal documents necessary to demonstrate the applicant's ability to repay and provide collateral for the loan. The department shall develop a standard list of documents required of all

applicants, and may also request from individual applicants additional financial and legal documents not provided on this list.

(4) An explanation of the reasons why the project tank is not in compliance with applicable local, state, or federal standards, and evidence that tanks not included in the list of project tanks are currently in compliance with applicable local, state, or federal standards.

(5) A detailed cost estimate of the tasks which are required to be completed in order for the project tanks to comply with applicable local, state, or federal standards.

(6) Any other information which the department determines to be necessary to include in an application form.

(b) Notwithstanding paragraph (4) of subdivision (a), the department shall not refuse to grant a loan to an applicant solely because the applicant has failed to obtain a permit pursuant to the requirements of Chapter 6.7 (commencing with Section 25280) of Division 20 of the Health and Safety Code.

SEC. 4. Section 15399.14 of the Government Code is amended to read:

15399.14. (a) The minimum amount which the department may loan an applicant is ten thousand dollars ($10,000), and the maximum amount which the department may loan an applicant is three hundred fifty thousand dollars ($350,000). A loan applicant shall not have more than one loan, pursuant to this article, outstanding at any one time.

(b) The term of the loan shall be for a maximum of 20 years if secured by real property, and for 10 years if not secured by real property. The interest rate for loans shall be set at the rate earned by the Surplus Money Investment Fund at the time of the loan commitment.

(c) Loan funds may be used to finance up to 100 percent of the costs necessary to upgrade, remove, or replace project tanks, including corrective actions, to meet applicable local, state, or federal standards.

(d) The repeal of this chapter pursuant to Section 15399.21 shall not extinguish a loan obligation and shall not impair the deed of trust or other collateral made pursuant to this chapter or the authority of the state to pursue appropriate action for collection.

(e) The department may charge a loan fee to loan applicants of up to 2 percent of the requested loan amount. The loan fee shall be deposited in the Petroleum Financing Collection Account.

SEC. 5. Section 15399.20 of the Government Code is amended to read:

15399.20. The department may, upon appropriation by the Legislature, expend the interest earnings in the subaccount in the Petroleum Underground Storage Tank Financing Account specified in subdivision (d) of Section 15399.17 for the administrative expenses in carrying out this chapter.

SEC. 6. Section 25299.52 of the Health and Safety Code is

amended to read:

25299.52. (a) The board shall adopt a priority ranking list at least twice annually for awarding claims pursuant to Section 25299.57 or 25299.58. Any owner or operator eligible for payment of a claim pursuant to Section 25299.54 shall file an application with the board within a reasonable period, to be determined by the board, prior to adoption of the priority ranking list.

(b) In awarding claims pursuant to Section 25299.57 or 25299.58, the board shall pay claims in accordance with the following order of priority:

(1) Owners of tanks who are eligible to file a claim pursuant to subdivision (e) of Section 25299.54.

(2) Owners and operators of tanks which are small businesses, as defined in subdivision (c) of Section 14837 of the Government Code.

(3) Owners or operators of tanks, if the owner or operator owns and operates a business which employs fewer than 500 full-time and part-time employees, is independently owned and operated, is not dominant in its field of operation, the principal office is located in California, and all of the officers of the business are domiciled in California.

(4) All other tank owners and operators.

(c) The fund may sue and be sued in its own name.

CHAPTER 432

An act to amend Section 4525 of the Government Code, and to amend Sections 25281, 25299.10, 25299.52, 25299.57, 25299.58, 25299.60, 25299.77, and 25299.81 of the Health and Safety Code, relating to hazardous substances, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1993. Filed with Secretary of State September 24, 1993.]

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

SECTION 1. Section 4525 of the Government Code is amended to read:

4525. For purposes of this chapter, the following terms have the following meaning:

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.

(b) "State agency head" means the secretary, administrator, or head of a department, agency, or bureau of the State of California authorized to contract for architectural, landscape architectural,

engineering, environmental, land surveying, and construction project management services.

(c) "Local agency head" means the secretary, administrator, or head of a department, agency, or bureau of any city, county, city and county, whether general law or chartered, or any district which is authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(d) "Architectural, landscape architectural, engineering, environmental, and land surveying services" includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(e) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 for management and supervision of work performed on state construction projects.

(f) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. "Environmental services" also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

SEC. 2. Section 25281 of the Health and Safety Code is amended to read:

25281. For purposes of this chapter, the following definitions apply:

(a) "Automatic line leak detector" means any method of leak detection, as determined in regulations adopted by the board, which alerts the owner or operator of an underground storage tank to the presence of a leak. "Automatic line leak detector" includes, but is not limited to, any device or mechanism which alerts the owner or operator of an underground storage tank to the presence of a leak by restricting or shutting off the flow of hazardous substance through piping, or by triggering an audible or visual alarm, and which detects leaks of three gallons or more per hour at 10 pounds per square inch line pressure within one hour.

(b) "Board" means the State Water Resources Control Board. "Regional board" means a California regional water quality control board.

(c) "Department" means the Department of Toxic Substances Control.

(d) "Facility" means any one, or combination of, underground storage tanks used by a single business entity at a single location or site.

(e) "Federal act" means Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, as

added by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), or as it may subsequently be amended or supplemented.

(f) "Hazardous substance" means both of the following:

(1) All of the following liquid and solid substances, unless the department, in consultation with the board, determines that the substance could not adversely affect the quality of the waters of the state:

(A) Substances on the list prepared by the Director of Industrial Relations pursuant to Section 6382 of the Labor Code.

(B) Hazardous substances, as defined in Section 25316.

(C) Any substance or material which is classified by the National Fire Protection Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class III-A combustible liquid.

(2) Any regulated substance, as defined in subsection (2) of Section 6991 of Title 42 of the United State Code, as that section reads on January 1, 1989, or as it may subsequently be amended or supplemented.

(g) "Local agency" means the department, office, or other agency of a county or city designated pursuant to Section 25283.

(h) "Operator" means any person in control of, or having daily responsibility for, the daily operation of an underground storage tank system.

(i) "Owner" means the owner of an underground storage tank.

(j) "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, or association. "Person" also includes any city, county, district, the state, any department or agency thereof, or the United States to the extent authorized by federal law.

(k) "Pipe" means any pipeline or system of pipelines which is used in connection with the storage of hazardous substances and which is not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

(*l*) "Primary containment" means the first level of containment, such as the portion of a tank which comes into immediate contact on its inner surface with the hazardous substance being contained.

(m) "Product-tight" means impervious to the substance which is contained, or is to be contained, so as to prevent the seepage of the substance from the primary containment. To be product-tight, the tank shall not be subject to physical or chemical deterioration by the substance which it contains over the useful life of the tank.

(n) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land, or the subsurface soils.

(o) "Secondary containment" means the level of containment external to, and separate from, the primary containment.

(p) "Single-walled" means construction with walls made of only one thickness of material. For the purposes of this chapter, laminated, coated, or clad materials are considered single-walled.

(q) "Special inspector" means a professional engineer, registered pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, who is qualified to attest, at a minimum, to structural soundness, seismic safety, the compatibility of construction materials with contents, cathodic protection, and the mechanical compatibility of the structural elements of underground storage tanks.

(r) "Storage" or "store" means the containment, handling, or treatment of hazardous substances, either on a temporary basis or for a period of years. "Storage" or "store" does not mean the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit by the department pursuant to Section 25200 or granted interim status under Section 25200.5.

(s) "SWEEPS" means the Statewide Environmental Evaluation and Planning System administered by the California Association of Environmental Health Administrators.

(t) "Tank" means a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials (e.g. wood, concrete, steel, plastic) which provides structural support.

(u) "Tank integrity test" means a test method capable of detecting an unauthorized release from an underground storage tank consistent with the minimum standards adopted by the board.

(v) "Tank tester" means an individual who performs tank integrity tests on underground storage tanks.

(w) "Unauthorized release" means any release of any hazardous substance which does not conform to this chapter, including, but not limited to, an unauthorized release specified in Section 25295.5, unless this release is authorized by the board or a regional board pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(x) (1) "Underground storage tank" means any one or combination of tanks, including pipes connected thereto, which is used for the storage of hazardous substances and which is substantially or totally beneath the surface of the ground. "Underground storage tank" does not include any of the following:

(A) A tank with a capacity of 1,100 gallons or less which is located on a farm and which stores motor vehicle fuel used primarily for agricultural purposes and not for resale.

(B) A tank which is located on a farm or at the residence of a person, which has a capacity of 1,100 gallons or less, and which stores home heating oil for consumptive use on the premises where stored.

(C) Structures, such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, lined and unlined pits, sumps and lagoons. Sumps which are a part of a monitoring system required under Section 25291 or 25292 and sumps or other structures defined as underground storage tanks under the federal

act are not exempted by this subparagraph.

(D) Until January 1, 1996, a tank holding hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(2) Structures identified in subparagraphs (C) and (D) of paragraph (1) may be regulated by the board and any regional board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) to ensure that they do not pose a threat to water quality.

(y) "Underground tank system" or "tank system" means an underground storage tank, connected piping, ancillary equipment, and containment system, if any.

SEC. 3. Section 25299.10 of the Health and Safety Code is amended to read:

25299.10. (a) This chapter shall be known, and may be cited, as the Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989.

(b) The Legislature hereby finds and declares all of the following:

(1) In order to help ensure an efficient petroleum underground storage tank cleanup program that adequately protects public health and safety and the environment and provides for the rapid distribution of cleanup funds that will assist the state's recovery, it is in the best interest of the public that the board devote maximum effort to the expedited processing and payment of all claims filed pursuant to Sections 25299.57 and 25299.58.

(2) It is estimated that approximately 90 percent of the underground storage tanks in the state contain petroleum and the remaining 10 percent of the tanks contain various chemical constituents.

(3) Although the exact extent of the problem is unknown, it is thought that a significant number of the underground storage tanks containing petroleum in the state may be leaking.

(4) In recent years, owners or operators of underground storage tanks have been unable to obtain affordable environmental impairment liability insurance coverage to pay for corrective action or the obtainable coverage has been outside their financial means.

(5) There are long-term threats to public health and water quality if a comprehensive, uniform, and efficient corrective action program is not established.

(6) It is in the best interest of the health and safety of the people of the state to establish a fund to pay for corrective action where coverage is not available.

(7) A uniform, comprehensive, and efficient program establishing financial responsibility and corrective action requirements for leaking underground storage tanks containing petroleum will enable private commercial insurers to expand the availability and affordability of insurance coverage.

(8) An efficient program of establishing corrective action requirements and funds or insurance coverage should encourage

corrective action to be taken in the first instance by the owner or operator of the leaking underground storage tank containing petroleum.

(9) Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code provides for regulation of underground storage tanks and allows underground storage tanks to be regulated pursuant to a state program, in lieu of a federal program, in states which are authorized to implement these provisions.

(10) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to Chapter 6.7 (commencing with Section 25280), to authorize the state to implement the provisions of Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, including any acts amending or supplementing Subchapter IX and any federal regulations and guidelines adopted pursuant to Subchapter IX.

(11) It is in the public interest for the state to provide financial assistance to small businesses and farms which have limited financial resources, to ensure timely compliance with the law governing underground storage tanks, and to ensure the adequate protection of groundwater.

SEC. 4. Section 25299.52 of the Health and Safety Code is amended to read:

25299.52. (a) The board shall adopt a priority ranking list at least annually for awarding claims pursuant to Section 25299.57 or 25299.58. Any owner or operator eligible for payment of a claim pursuant to Section 25299.54 shall file an application with the board within a reasonable period, to be determined by the board, prior to adoption of the priority ranking list.

(b) Except as provided in subdivision (c), in awarding claims pursuant to Section 25299.57 or 25299.58, the board shall pay claims in accordance with the following order of priority:

(1) Owners of tanks who are eligible to file a claim pursuant to subdivision (e) of Section 25299.54.

(2) Owners and operators of tanks which are either of the following:

(A) An owner or operator which meets the requirements of subdivision (c) of Section 14837 of the Government Code.

(B) An owner or operator which is a city, county, district, or nonprofit organization that receives total annual revenues of not more than seven million dollars ($7,000,000).

(3) Owners or operators of tanks which are either of the following:

(A) The owner or operator owns and operates a business which employs fewer than 500 full-time and part-time employees, is independently owned and operated, is not dominant in its field of operation, the principal office is located in California, and all of the officers of the business are domiciled in California.

(B) The owner or operator is a city, county, district, or nonprofit organization that employs fewer than 500 full-time and part-time employees.

(4) All other tank owners and operators.

(c) (1) In any year in which the board is not otherwise authorized to award at least 15 percent of the total amount of funds committed for that year to tank owners or operators in those categories set forth in paragraph (3) or (4) of subdivision (b) due to the priority ranking list award limitations set forth in subdivision (b), the board shall allocate between 14 and 16 percent of the total amount of funds committed for that year to each category that is not otherwise entitled to at least that level of committed funding for that year.

(2) If the total amount of claims outstanding in one or more of the priority categories specified in paragraph (3) or (4) of subdivision (b) is less than 15 percent of the total amount annually appropriated from the fund for the purpose of awarding claims, the board shall reserve for making claims in that category only the amount that is necessary to satisfy the outstanding claims in that category.

(d) The board shall give priority to a claim which is filed before the effective date of the act adding this subdivision by a city, county, or district that is eligible for payment pursuant to Section 25299.54 in the following manner:

(1) The board shall determine whether the priority category specified for a city, county, or district pursuant to subparagraph (B) of paragraph (2), or pursuant to subparagraph (B) of paragraph (3), of subdivision (b) requires that the priority ranking of the claim be changed.

(2) If the priority ranking of the claim is changed and the claim is placed into either the priority category specified in subparagraph (B) of paragraph (2), or specified in subparagraph (B) of paragraph (3), of subdivision (b), the board shall pay all other claims that were assigned to that priority category prior to the effective date of the act adding this subdivision before paying the claim of the city, county, or district.

(e) The board may, to carry out the intent specified in paragraph (1) of subdivision (b) of Section 25299.10 and to expedite the processing and awarding of claims pursuant to Sections 25299.57 and 25299.58, implement the contracting procedures required by Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, as may be necessary, to alleviate the claims processing and award backlog. If, at the conclusion of any fiscal year, 25 percent or more of the funds appropriated annually for awards to claimants during that year have not actually been obligated by the board, the board shall, at its next regularly scheduled meeting, determine, in a public hearing, whether, given the circumstances of the awards backlog, it is appropriate to implement those contracting procedures for some, or all, of the claims filed with the board.

(f) For purposes of this section, the following definitions shall apply:

(1) "Nonprofit organization" means a nonprofit public benefit organization incorporated pursuant to Part 2 (commencing with Section 511) of Division 2 of Title 1 of the Corporations Code.

(2) "Annual revenue," with respect to public entities, means the total annual general purpose revenues, excluding all restricted revenues over which the governing agency has no discretion, as reported in the Annual Report of Financial Transactions submitted to the Controller, for the latest fiscal year ending prior to the date the fund reimbursement claim application was filed.

(3) "Annual revenue," with respect to nonprofit organizations, means the total annual revenues, including all affiliates, as shown in an annual fiscal report filed with the Registry of Charitable Trusts of state and federal tax records, based on the latest fiscal year ending prior to the date the fund reimbursement claim application was filed.

(4) "General purpose revenues," as used in paragraph (2), means revenues consisting of all of the following: secured and unsecured revenues; less than countywide funds, secured and unsecured; prior year secured and unsecured penalties and delinquent taxes; sales and use taxes; transportation taxes (nontransit); property transfer taxes; transient lodging taxes; timber yield taxes; aircraft taxes; franchise taxes; fines, forfeitures, and penalties; revenues from use of money and property; motor vehicle in-lieu taxes; trailer coach in-lieu taxes; homeowner property tax relief; open-space tax relief; and cigarette taxes.

(g) The fund may sue and be sued in its own name.

SEC. 5. Section 25299.52 of the Health and Safety Code is amended to read:

25299.52. (a) The board shall adopt a priority ranking list at least annually for awarding claims pursuant to Section 25299.57 or 25299.58. Any owner or operator eligible for payment of a claim pursuant to Section 25299.54 shall file an application with the board within a reasonable period, to be determined by the board, prior to adoption of the priority ranking list.

(b) Except as provided in subdivision (c), in awarding claims pursuant to Section 25299.57 or 25299.58, the board shall pay claims in accordance with the following order of priority:

(1) Owners of tanks who are eligible to file a claim pursuant to subdivision (e) of Section 25299.54.

(2) Owners and operators of tanks which are either of the following:

(A) An owner or operator which is a small business, as defined in subdivision (c) of Section 14837 of the Government Code.

(B) An owner or operator which is a city, county, district, or nonprofit organization that receives total annual revenues of not more than seven million dollars ($7,000,000).

(3) Owners or operators of tanks which are either of the following:

(A) The owner or operator owns and operates a business which employs fewer than 500 full-time and part-time employees, is independently owned and operated, is not dominant in its field of

operation, the principal office is located in California, and all of the officers of the business are domiciled in California.

(B) The owner or operator is a city, county, district, or nonprofit organization that employs fewer than 500 full-time and part-time employees.

(4) All other tank owners and operators.

(c) (1) In any year in which the board is not otherwise authorized to award at least 15 percent of the total amount of funds committed for that year to tank owners or operators in those categories set forth in paragraph (3) or (4) of subdivision (b) due to the priority ranking list award limitations set forth in subdivision (b), the board shall allocate between 14 and 16 percent of the total amount of funds committed for that year to each category that is not otherwise entitled to at least that level of committed funding for that year.

(2) If the total amount of claims outstanding in one or more of the priority categories specified in paragraph (3) or (4) of subdivision (b) is less than 15 percent of the total amount annually appropriated from the fund for the purpose of awarding claims, the board shall reserve for making claims in that category only the amount that is necessary to satisfy the outstanding claims in that category.

(d) The board shall give priority to a claim which is filed before the effective date of the act adding this subdivision by a city, county, or district that is eligible for payment pursuant to Section 25299.54 in the following manner:

(1) The board shall determine whether the priority category specified for a city, county, or district pursuant to subparagraph (B) of paragraph (2), or pursuant to subparagraph (B) of paragraph (3), of subdivision (b) requires that the priority ranking of the claim be changed.

(2) If the priority ranking of the claim is changed and the claim is placed into either the priority category specified in subparagraph (B) of paragraph (2), or specified in subparagraph (B) of paragraph (3), of subdivision (b), the board shall pay all other claims that were assigned to that priority category prior to the effective date of the act adding this subdivision before paying the claim of the city, county, or district.

(e) The board may, to carry out the intent specified in paragraph (1) of subdivision (b) of Section 25299.10 and to expedite the processing and awarding of claims pursuant to Sections 25299.57 and 25299.58, implement the contracting procedures required by Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, as may be necessary, to alleviate the claims processing and award backlog. If, at the conclusion of any fiscal year, 25 percent or more of the funds appropriated annually for awards to claimants during that year have not actually been obligated by the board, the board shall, at its next regularly scheduled meeting, determine, in a public hearing, whether, given the circumstances of the awards backlog, it is appropriate to implement those contracting procedures for some, or all, of the claims filed with the board.

(f) For purposes of this section, the following definitions shall apply:

(1) "Nonprofit organization" means a nonprofit public benefit organization incorporated pursuant to Part 2 (commencing with Section 511) of Division 2 of Title 1 of the Corporations Code.

(2) "Annual revenue," with respect to public entities, means the total annual general purpose revenues, excluding all restricted revenues over which the governing agency has no discretion, as reported in the Annual Report of Financial Transactions submitted to the Controller, for the latest fiscal year ending prior to the date the fund reimbursement claim application was filed.

(3) "Annual revenue," with respect to nonprofit organizations, means the total annual revenues, including all affiliates, as shown in an annual fiscal report filed with the Registry of Charitable Trusts of state and federal tax records, based on the latest fiscal year ending prior to the date the fund reimbursement claim application was filed.

(4) "General purpose revenues," as used in paragraph (2), means revenues consisting of all of the following: secured and unsecured revenues; less than countywide funds, secured and unsecured; prior year secured and unsecured penalties and delinquent taxes; sales and use taxes; transportation taxes (nontransit); property transfer taxes; transient lodging taxes; timber yield taxes; aircraft taxes; franchise taxes; fines, forfeitures, and penalties; revenues from use of money and property; motor vehicle in-lieu taxes; trailer coach in-lieu taxes; homeowner property tax relief; open-space tax relief; and cigarette taxes.

(g) The fund may sue and be sued in its own name.

SEC. 6. Section 25299.57 of the Health and Safety Code is amended to read:

25299.57. (a) If the board makes the determination specified in subdivision (d), the board may only pay for the costs of corrective actions which exceed the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than nine hundred ninety thousand dollars ($990,000) for each occurrence. In the case of an owner or operator who, as of January 1, 1988, was required to perform corrective action, who initiated that corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), who is undertaking the corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), and who had not completed the corrective action on October 2, 1989, may apply to the board for satisfaction of a claim filed pursuant to this article.

(b) For claims eligible for reimbursement pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the actual cost of corrective action to the board, which shall either approve or disapprove the costs incurred as reasonable and necessary.

(c) For claims eligible for prepayment pursuant to subdivision (c)

of Section 25299.55, the claimant shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate.

(d) A claim specified in subdivision (a) may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant is required to undertake or contract for corrective action pursuant to Section 25299.37, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code.

(3) (A) Except as provided in subparagraph (B), the claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280).

(B) All claimants who file their claim on or after January 1, 1994, and all claimants who filed their claim prior to that date but are not eligible for a waiver of the permit requirement pursuant to board regulations in effect on the date of the filing of the claim, and who did not obtain or apply for any permit required by subdivision (a) of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) regardless of the reason or reasons that the permit was not obtained or applied for. However, on and after January 1, 1994, the board may waive the provisions of subparagraph (A) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit.

(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the application to the fund, the claimant has paid all current underground storage tank fees imposed pursuant to Section 25299.41 and all prior fees due on and after January 1, 1991.

(C) (i) A claimant exempted pursuant to subparagraph (B) shall obtain a level of financial responsibility pursuant to Section 25299.32 of at least twenty thousand dollars ($20,000).

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (B) were satisfied prior to the causing of any contamination. That demonstration may be made through a certification issued by the permitting agency based on site and tank tests at the time of permit application or in any other manner acceptable to the board.

(D) The board shall rank all claims resubmitted pursuant to subparagraph (B) lower than all claims filed before January 1, 1994, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(4) The board has approved either the costs incurred for the corrective action pursuant to subdivision (b) or the estimated costs

for corrective action pursuant to subdivision (c).

(e) The board shall provide the claimant, whose cost estimate has been approved, a letter of credit authorizing payment of the costs from the fund.

(f) The claimant may submit a claim for partial payment to cover the costs of corrective action performed in stages, as approved by the board.

(g) (1) Any claimant who submits a claim for payment to the board shall submit multiple bids for prospective costs as prescribed in regulations adopted by the board pursuant to Section 25299.77.

(2) Paragraph (1) does not apply to a tank owned or operated by a public agency if the prospective costs are for private professional services within the meaning of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code and those services are procured in accordance with the requirements of that chapter.

SEC. 7. Section 25299.58 of the Health and Safety Code is amended to read:

25299.58. (a) Except as provided in subdivision (d), if the board makes the determination specified in subdivision (b), the board may only reimburse those costs which are related to the compensation of third parties for bodily injury and property damages and which exceed the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than nine hundred ninety thousand dollars ($990,000) for each occurrence.

(b) A claim may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant has been ordered to pay a settlement or final judgment for third-party bodily injury or property damage arising from operating an underground storage tank.

(3) (A) Except as provided in subparagraph (B), the claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280).

(B) All claimants who file their claim on or after January 1, 1994, and all claimants who filed their claim prior to that date but are not eligible for a waiver of the permit requirement pursuant to board regulations in effect on the date of the filing of the claim, and who did not obtain or apply for any permit required by subdivision (a) of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) regardless of the reason or reasons that the permit was not obtained or applied for. However, on and after January 1, 1994, the board may waive the provisions of subparagraph (A) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit.

(ii) Prior to submittal of the application to the fund, the claimant

has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the application to the fund, the claimant has paid all current underground storage tank fees imposed pursuant to Section 25299.41 and all prior fees due on and after January 1, 1991.

(C) (i) A claimant exempted pursuant to subparagraph (B) shall obtain a level of financial responsibility pursuant to Section 25299.32 of at least twenty thousand dollars ($20,000).

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (B) were satisfied prior to any contamination having been caused. That demonstration may be made through a certification issued by the permitting agency based on site and tank tests at the time of permit application or in any other manner as may be acceptable to the board.

(D) The board shall rank all claims resubmitted pursuant to subparagraph (B) lower than all claims filed before January 1, 1994, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(4) The claimant is required to undertake or contract for corrective action pursuant to Section 25299.37, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280).

(c) A claimant may be reimbursed by the fund for compensation of third parties for only the following:

(1) Medical expenses.

(2) Actual lost wages or business income.

(3) Actual expenses for remedial action to remedy the effects of damage to the property of the third party caused by the unauthorized release of petroleum from an underground storage tank.

(4) The fair market value of the property rendered permanently unsuitable for use by the unauthorized release of petroleum from an underground storage tank.

(d) The board shall pay a claim submitted pursuant to subdivision (e) of Section 25299.54 for the costs related to the compensation of third parties for bodily injury and property damages which exceed ten thousand dollars ($10,000) but not more than nine hundred ninety thousand dollars ($990,000) for each occurrence.

SEC. 8. Section 25299.60 of the Health and Safety Code is amended to read:

25299.60. (a) The board shall not pay any claims against or presented to the fund pursuant to this article if the claim exceeds the total money in the fund at any one time. The board shall pay these claims only when additional money is collected, appropriated, or otherwise added to the fund. If the total claims outstanding at any time exceed the current balance of the fund, the board shall pay these claims in full to the extent authorized pursuant to this article.

(b) Any claim filed against the fund pursuant to this article may be paid only out of the fund. This chapter does not authorize the payment by the state of any additional amount with respect to any claim out of any source other than the fund.

(c) (1) Except as provided in paragraph (2), notwithstanding this article, the board shall not pay out any claims pursuant to this article to a claimant if the total amount paid to the claimant is greater than 5 percent of the total amount annually appropriated by the Legislature from the fund for purposes of paying claims pursuant to this article. For purposes of determining the total amount paid to a claimant for purposes of this section, the board shall include any payments made to any person or entity which has a relationship with the claimant specified in subsection (b) of Section 267 of Title 26 of the United States Code.

(2) The board may exempt a claim from the requirements of paragraph (1) if the board determines all of the following:

(A) The exemption would provide for an equitable and timely use of available fund moneys.

(B) The exemption would help to ensure an efficient petroleum underground storage tank cleanup program that adequately protects public health and safety and the environment.

(C) All claims subject to the exemption are awarded in accordance with the priority rankings established pursuant to Section 25299.52.

SEC. 9. Section 25299.77 of the Health and Safety Code is amended to read:

25299.77. (a) The board shall adopt regulations to implement this chapter. In adopting these regulations, the board shall ensure that the regulations are consistent with this chapter, Chapter 6.7 (commencing with Section 25280), and the requirements for state programs implementing the federal act. When adopting regulations to implement this chapter, including the adoption of regulations establishing requirements for demonstrating financial responsibility pursuant to Article 3 (commencing with Section 25299.30), and establishing corrective action requirements pursuant to Article 4 (commencing with Section 25299.36), the board may adopt the regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The adoption of any regulations pursuant to this section that are filed with the Office of Administrative Law on or before January 1, 1995, shall be deemed to be an emergency necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulation adopted by the board pursuant to this subdivision shall not be repealed by the Office of Administrative Law, and shall remain in effect until revised by the board.

SEC. 10. Section 25299.81 of the Health and Safety Code is

amended to read:

25299.81. (a) Except as provided in subdivisions (b) and (c), this chapter shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2005, deletes or extends that date.

(b) Notwithstanding subdivision (a), Article 1 (commencing with Section 25299.10), Article 2 (commencing with Section 25299.11), and Article 4 (commencing with Section 25299.36) shall not be repealed and shall remain in effect on January 1, 2005.

(c) The repeal of this chapter does not terminate any of the following rights, obligations, or authorities, or any provision necessary to carry out these rights and obligations:

(1) The filing and payment of claims against the fund, until the moneys in the fund are exhausted. Upon exhaustion of the fund, any remaining claims shall be invalid.

(2) The repayment of loans, outstanding as of January 1, 2005, due and payable to the board under the terms of Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code.

(3) The resolution of any cost recovery action.

(d) On or before September 30, 1994, and annually by September 30 thereafter, the board shall prepare and submit a report to the Legislature which describes the status of the fund and sets forth recommendations for legislative changes to improve the efficiency of the program established pursuant to this chapter, with a special emphasis on expediting environmental cleanup and the distribution of money from the fund, including alternative methods for the distribution of that money.

SEC. 11. On or before January 1, 1995, the State Water Resources Control Board shall submit a report to the Legislature regarding whether the temporary exemption in the definition of underground storage tank in Section 25281 of the Health and Safety Code for tanks holding hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices should be permanently enacted into law. The report shall address all of the following:

(a) The number of tanks holding hydraulic fluid that are in operation in the state, are no longer in use, or are abandoned.

(b) An estimate of the number of these tanks that have leaked hydraulic fluid into the environment.

(c) An evaluation of the types of dangers to the environment posed by tanks leaking hydraulic fluid.

(d) An assessment as to whether the danger posed by leaking hydraulic fluid tanks justifies their regulation pursuant to Chapter 6.7 (commencing with Section 25280) of Division 20 of the Health and Safety Code.

SEC. 12. Section 5 of this bill incorporates amendments to Section 25299.52 of the Health and Safety Code proposed by both this bill and AB 2040. It shall only become operative if (1) both bills are enacted

and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 25299.52 of the Health and Safety Code, and (3) this bill is enacted after AB 2040, in which case Section 25299.52 of the Health and Safety Code, as amended by Section 4 of this bill, shall remain operative only until the operative date of AB 2040, at which time Section 5 of this bill shall become operative.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to fully implement the provisions regulating underground storage tanks systems and to comply with federal law regulating these tanks, it is necessary that this act take effect immediately.

CHAPTER 433

An act to amend Section 14132 of, to add Section 14136 to, to amend, repeal, and add Section 14130 of, to add and repeal Sections 14130.1, 14130.2, 14130.3, and 14137 of, and to repeal and add Section 14524.2 of, the Government Code, and to amend Section 2053 of the Public Contract Code, relating to highways, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1993. Filed with Secretary of State September 24, 1993.]

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

SECTION 1. It is the intent of the Legislature that the Director of Transportation have the continued flexibility to contract out, according to Article 2.5 (commencing with Section 14130) of Chapter 2 of Part 5 of Division 3 of Title 2 of the Government Code, at a level or levels necessary in the judgment of the director to timely deliver transportation projects. It is the intent of the Legislature that this act be construed as affording the Director of Transportation a new and independent basis upon which to justify contracting out actions taken during the time that Sections 2, 4, 5, 6, and 9 of this act

are effective.

SEC. 2. Section 14130 of the Government Code is amended to read:

14130. (a) The Legislature hereby finds and declares all of the following:

(1) There is a compelling public interest in ensuring that all federal, state, local, and private funds available for the state highway program are captured and used in a timely manner in order to generate maximum employment and business opportunities in California.

(2) In order to maximize the use of federal, state, local, and private funds and to maintain a competitive posture in seeking supplemental federal funds, California must have a comprehensive and integrated highway construction plan in place.

(3) Changes in federal, state, and local revenues and the growing private participation in state highway construction can result in significant fluctuations in workload relating to project study reports, project development, surveying, and construction inspection. To maintain a more stable work force in the department and avoid the costly process of short-time hiring and layoff while still responding in a timely manner to funding opportunities and uncertainties, additional flexibility through outside contracting and cooperative agreements with local public agencies is needed to supplement the department's program staff.

(4) The department's experience with contracting out indicates that the use of private consultants to supplement the department's workforce has permitted the department to substantially enhance its project delivery. The department, with the help of the private engineering community, has recently accelerated nearly one billion dollars ($1,000,000,000) worth of construction projects on the state highway system. This significant increase in project delivery capability must continue in order for the department to meet its commitments for timely project delivery. Without the ability to continue a stable contracting out program, the Legislature finds and declares that the department will not be able to perform project delivery adequately, competently, or satisfactorily, thereby necessitating the use of private consultants to supplement its in-house staff.

(5) The use of private consultants to assist in project delivery is a new state function and does not duplicate the existing functions of the department.

(b) Therefore, it is the intent of the Legislature that the department contract for the services of engineers, architects, surveyors, planners, environmental specialists, and materials testing specialists, in order to provide professional and technical project development services to the department whenever the department is inadequately staffed to satisfactorily carry out its program of project study reports, project development, surveying, and construction inspection in a timely and effective manner.

Compliance with the state's participation goals for these contracts shall be a factor for consideration by the Legislature in evaluating future budget requests by the department. It is the further intent of the Legislature to permit, through cooperative agreements with the department, local public agencies to undertake that program of activities on state highway projects for which they are a funding source.

(c) The department may utilize contracting out for state highway projects funded by federal and state moneys to support state transportation infrastructure funded by local resources, to ensure timely retrofitting for seismic safety on state transportation infrastructure, and to ensure timely and cost-effective project delivery.

(d) In furtherance of the Legislature's intent to encourage contracting out by the department, the department shall not be required to utilize state employees to perform all engineering and related services to the maximum extent required to meet the goals of this article. The department is not required to staff to an internal level that matches its ability to assimilate and productively use new staff.

(e) In consultation with Caltrans Equal Employment Advisory Council, whose membership shall include persons representing statewide community organizations, the department shall prepare and adopt an affirmative action plan for its management and other personnel positions which reflects the ethnic demographics of the state, taking into consideration the availability of the workforce in the various ethnic groups. The department shall make genuine efforts to achieve in its workforce the ethnic and racial composition of the labor force population of the state. These efforts shall include, but not be limited to, the department's personnel hiring and recruitment policies and practices, as well as training and management development.

(f) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 3. Section 14130 is added to the Government Code, to read:

14130. (a) The Legislature hereby finds and declares all of the following:

(1) There is a compelling public interest in ensuring that all federal, state, local, and private funds available for the state highway program are captured and used in a timely manner.

(2) In order to maximize the use of federal, state, local, and private funds and to maintain a competitive posture in seeking supplemental federal funds, California must have a highway construction plan in place.

(3) Changes in federal, state, and local revenues and the growing private participation in state highway construction can result in significant fluctuations in workload relating to project study reports, project development, surveying, and construction inspection. To

maintain a more stable workforce in the department and avoid the costly process of short-time hiring and layoff while still responding in a timely manner to funding opportunities and uncertainties, additional flexibility through outside contracting and cooperative agreements with local public agencies is needed to supplement the department's program staff.

(b) Therefore, it is the intent of the Legislature that the department contract for the services of engineers, architects, surveyors, planners, environmental specialists, and materials testing specialists, in order to provide professional and technical project development services to the department whenever the department is inadequately staffed to satisfactorily carry out its program of project study reports, project development, surveying, and construction inspection in a timely and effective manner. It is the further intent of the Legislature to permit, through cooperative agreements with the department, local public agencies to undertake that program of activities on state highway projects for which they are a funding source.

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

SEC. 4. Section 14130.1 is added to the Government Code, to read:

14130.1. (a) The Legislature finds and declares that following the 1989 Loma Prieta Earthquake, the Legislature enacted Chapter 18 of the Statutes of 1989, First Extraordinary Session, which added Article 4.8 (commencing with Section 179) to Chapter 1 of Division 1 of the Streets and Highways Code, thereby establishing a seismic safety retrofit program for publicly owned bridges. Certain of the contracts for those retrofit projects are required to be executed by December 31, 1993.

(b) For the purpose of contracting for services under this article, engineering services necessary to complete the seismic safety retrofit program prescribed by Article 4.8 (commencing with Section 179) of Chapter 1 of Division 1 of the Streets and Highways Code shall be considered a short-term workload demand.

(c) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute which is enacted before January 1, 1998, deletes or extends that date.

SEC. 5. Section 14130.2 is added to the Government Code, to read:

14130.2. (a) The Legislature hereby finds and declares:

(1) In cases where a local jurisdiction chooses to provide its own financing from, among other sources, retail transactions and use taxes, for construction of a project in the state highway system, other provisions of law allow the local jurisdiction to request that certain work necessary to deliver the project be performed by the department.

(2) Engineering services necessary for the department to deliver the project are not required to be considered in determining the department's project delivery staffing needs. The department is not

required to staff at a level to provide services for other agencies.

(b) The department may balance the need for outside contracting for these services on a program basis, rather than on an individual contract basis.

(c) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute which is enacted before January 1, 1998, deletes or extends that date.

SEC. 6. Section 14130.3 is added to the Government Code, to read:

14130.3. The Legislature further finds and declares all of the following:

(a) As a result of the public contracting goals for minority, women, and disabled veteran business participation in the provision of design services for state highways, and directly as a result of these programs, new consultant firms have come into existence. This new consultant community is largely dependent upon the department for its workload. As a result of recent court decisions, which caused the termination or the initiation of termination of substantial contracts, the economic burden has fallen disproportionately upon the minority, women, and disabled veteran business enterprise community. The cancellation or termination of minority, women, and disabled veteran business enterprise contracts would be inconsistent with the public contract goals contained in Article 1.5 (commencing with Section 10115 of Chapter 1 of Part 2 of Division 2 of the Public Contract Code.

(b) The economic burdens on the minority, women, and disabled veteran business enterprise community in a recessionary period are particularly devastating. The Legislature seeks to create additional business enterprise opportunities by the reinstatement of contracts either terminated or initiated for termination by the department after July 1, 1993.

(c) The failure to reinstate the minority, women, and disabled veteran business enterprise and other consultant contracts will result in the direct loss of approximately 1,200 jobs in California.

(d) This section shall remain in effect only until January 1, 1998, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 7. Section 14132 of the Government Code is amended to read:

14132. (a) In addition to the requirements set forth in this section, in the department's contracting out for the services of engineers, architects, surveyors, planners, environmental specialists, and material specialists, the department shall comply with the criteria governing the state's participation goals for minority, women, and disabled veteran owned firms as specified in Article 1.5 (commencing with Section 10115) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code. These goals shall apply to the overall dollar amount expended each year by the department pursuant to this article.

(b) The department shall develop a list of qualified minority, women, and disabled veteran business enterprises that have been certified as a minority, women, or disabled veteran business enterprise, and that are interested in performing engineering, architectural, environmental, landscape architectural, or land surveying services under contract with the department, utilizing existing resources such as the Office of Small and Minority Business, the Minority Business Development Agency, and the Small Business Administration. Notice of the development of the list and request for statements of interest shall be published in professional publications at least 60 days prior to the deadline for submittal of statements of interest. The qualifications required for minority business enterprises and women business enterprises shall be the same as those required for any other firm or individual contracting with the department for the purposes of this article.

(c) Any minority, women, or disabled veteran business enterprise not initially included on the list of interested firms may file statements of interest at any time, and the department shall evaluate the statements and notify the minority or women or disabled veteran business enterprise of their eligibility for placement on the list within 60 days of the request. Any minority, women, or disabled veteran business enterprise that is eligible to be counted toward the department's participation goals and that meets the standard requirements shall be added to the list of interested firms immediately.

SEC. 8. Section 14136 is added to the Government Code, to read:

14136. (a) The department shall encourage mentor-protege agreements between prime contractors and subcontractors whereby protege firms may receive appropriate developmental assistance from the mentor firm to enhance protege firms' capabilities to perform as subcontractors and suppliers.

(b) In encouraging establishment of mentor-protege relationships, the department may consider offering incentives to prime contractors including, but not limited to, a credit against participation goals required by Article 1.5 (commencing with Section 10115) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code.

(c) This section shall be known and may be cited as the Polanco Mentor-Protege Program of 1993.

SEC. 9. Section 14137 is added to the Government Code, to read:

14137. (a) Contracts in force or awarded on or before July 1, 1993, for services negotiated pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1, including, but not limited to, contracts awarded but not executed, between the department and private contractors, including, but not limited to, minority, women, and disabled veteran owned firms, shall not be terminated, but shall continue to the conclusion of those contracts subject to the same terms and conditions of the contracts as they read on July 1, 1993.

(b) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute which is enacted before January 1, 1998, deletes or extends that date.

SEC. 10. Section 14524.2 of the Government Code is repealed.

SEC. 11. Section 14524.2 is added to the Government Code, to read:

14524.2. (a) If the department's total project delivery plan for any year pursuant to subdivision (a) of Section 14524.15 requires a permanent and temporary capital outlay support staffing level which equals the 1986–87 budgeted permanent and temporary capital outlay support staffing level, the department's budget request for that year shall contain a permanent and temporary capital outlay support staffing level equal to its 1986–87 authorized permanent and temporary capital outlay support staffing level.

(b) If the department's total project delivery plan for any year pursuant to subdivision (a) of Section 14524.15 requires a permanent and temporary capital outlay support staffing level and personnel year equivalents for cash overtime and contract services which exceeds the 1986–87 authorized permanent and temporary capital outlay support staffing level and personnel year equivalents for cash overtime and contract services, the department's budget request for that year shall contain a permanent and temporary capital outlay support staffing level and personnel year equivalents for cash overtime equal to the 1986–87 authorized permanent and temporary capital outlay support staffing level and personnel year equivalents for cash overtime plus one-half of the excess over the 1986–87 authorized permanent and temporary capital outlay support staffing level and personnel year equivalents for cash overtime and contract services. The department may contract out, pursuant to Section 14131, an equal number of personnel year equivalents for each authorized permanent and temporary capital outlay support staffing level and personnel year equivalents for cash overtime which exceeds the 1986–87 authorized permanent and temporary capital outlay support staffing level and personnel year equivalents for cash overtime.

(c) For purposes of this section, "permanent and temporary capital outlay support staffing level" means the department's permanent and temporary capital outlay support staffing level funded by state and federal funds through the State Highway Account.

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

SEC. 12. Section 2053 of the Public Contract Code is amended to read:

2053. (a) A participating state or local agency shall certify a business enterprise as a minority or women business enterprise if that business enterprise meets the definition of a minority or women business enterprise specified in subdivisions (d) and (e) of Section 2051 in accordance with the eligibility standards set forth in Section 23.53 of Title 49 of the Code of Federal Regulations.

(b) A participating state or local agency shall certify a business enterprise as a disadvantaged business enterprise if that business enterprise meets the definition of a disadvantaged business enterprise specified in subdivision (f) of Section 2051, in accordance with the "Guidance for Making Determinations of Social and Economic Disadvantage" set forth in Appendix C to Subpart D of Part 23 of Title 49 of the Code of Federal Regulations.

(c) The participating state or local agency may include a site visit as part of its certification process. However, if a participating state or local agency certifies an applicant without conducting a site visit, any other participating state or local agency may conduct a site visit to verify ownership and control of the minority, women, or disadvantaged business enterprise. For purposes of conducting a site visit, certification documentation retained by the participating state or local agency shall be provided, upon request, to any other participating state or local agency. The applicant shall be subject to only one site visit per year, unless ownership and control changes have occurred in the business within the 12-month period following a site visit. Nothing in this chapter shall prohibit a participating state or local agency from conducting a site visit for purposes of preparing a response to an appeal from a notice of intent to decertify pursuant to Section 2055.

(d) A participating state or local agency shall complete the certification process, including verification of information submitted by the applicant and the performance of a site visit, if applicable, within 60 working days after receipt of a completed application, and shall submit the appropriate information to the Department of Transportation for insertion into the computerized data bank created pursuant to Section 2056.

(e) The grant of certification of a business enterprise by a participating state or local agency shall be valid for two years. A business enterprise that has been denied certification by a participating state or local agency may reapply for certification after six months have elapsed since the date of the denial of certification.

(f) A participating state or local agency shall provide adequate security methods to prevent contamination and unauthorized access to the information gathered during the verification process.

SEC. 13. (a) The Department of Transportation shall submit to the Legislative Analyst on or before September 1, 1996, data on total project costs for two groups of comparable highway projects. The Legislative Analyst shall determine whether the selected highway projects are comparable for purposes of this study, and shall identify the costs to be included. One group of projects shall represent projects for which engineering services were provided primarily by department staff and the second group of projects shall represent projects for which engineering services were provided primarily by outside consultants. The data submitted by the department shall reflect costs incurred during the period from July 1, 1993, to and including June 30, 1996.

(b) The Legislative Analyst shall include in the ascertainment of facts and recommendations made to the Legislature with respect to the Budget Act of 1997, a report on the cost-effectiveness of the Department of Transportation's use of contracted services rather than state employees.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to reduce transportation project delivery delays and improve transportation service, it is necessary that this act take effect immediately.

CHAPTER 434

An act to amend Section 61600 of, and to add Section 61100.6 to, the Government Code, relating to special districts.

[Approved by Governor September 23, 1993. Filed with Secretary of State September 24, 1993.]

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

SECTION 1. Section 61100.6 is added to the Government Code, to read:

61100.6. (a) Notwithstanding Sections 61100 and 61103, qualified voters within the Lake San Marcos area of San Diego County may form a district pursuant of this part for the purpose of contracting for security services to protect and safeguard life and property. The petition for formation shall be signed by at least 10 percent of the qualified voters within the proposed district. Notwithstanding Section 61107, once the chief petitioners have filed a sufficient petition, the local agency formation commission shall notify the board of supervisors which shall take the actions required pursuant to Section 61110. Every qualified voter may vote on the formation of the district and on all matters concerning the district, if formed, but shall be entitled to cast only one vote. For the purposes of this section, a qualified voter shall be (1) a voter who is a resident of the district, and (2) every owner of real property within the district who is not a resident of the district.

(b) The last equalized county assessment roll shall be conclusive evidence of ownership of the real property. Where land is owned in joint tenancy, tenancy in common, or any other multiple ownership, the owners of the land shall designate in writing which one of the owners shall be deemed the owner of the land for purposes of qualifying as a voter.

(c) The legal representative of a corporation or estate owning real property may vote on behalf of the corporation or estate. Before a

legal representative votes at a district election, he or she shall present to the precinct board a certified copy of his or her authority which shall be kept and filed with the returns of the election.

As used in this section, "legal representative" means an official of a corporation owning real property or a guardian, executor, or administrator of the estate of the holder of title to real property who:

(1) Is appointed under the laws of the state.

(2) Is entitled to the possession of the estate's real property.

(3) Is authorized by the appointing court to exercise the particular right, privilege, or immunity that he or she seeks to exercise.

(d) Notwithstanding Section 61200, every qualified voter shall be eligible to be a member of the board of directors of a community services district formed for the purpose of security services in the Lake San Marcos area in San Diego County.

(e) Any community services district formed for the purpose of security services in the Lake San Marcos area in San Diego County may exercise the powers of a community services district pursuant to only subdivision (h) of Section 61600.

(f) Any community services district formed for the purpose of security services in the Lake San Marcos area in San Diego County shall be formed in a combined election pursuant to subdivision (c) of Section 61116.

(g) In all other respects, a community services district formed after a petition pursuant to this section shall be governed by the provisions of this part.

SEC. 2. Section 61600 of the Government Code is amended to read:

61600. A district formed under this law may exercise the powers granted for any of the following purposes designated in the petition for formation of the district and for any other of the following purposes that the district shall adopt:

(a) To supply the inhabitants of the district with water for domestic use, irrigation, sanitation, industrial use, fire protection, and recreation.

(b) The collection, treatment, or disposal of sewage, waste, and storm water of the district and its inhabitants.

(c) The collection or disposal of garbage or refuse matter.

(d) Protection against fire.

(e) Public recreation including, but not limited to, aquatic parks and recreational harbors, equestrian trails, playgrounds, golf courses, swimming pools, or recreational buildings.

(f) Street lighting.

(g) Mosquito abatement.

(h) The equipment and maintenance of a police department, other police protection, or other security services to protect and safeguard life and property.

(i) To acquire sites for, construct, and maintain library buildings, and to cooperate with other governmental agencies for library

service.

(j) The opening, widening, extending, straightening, surfacing, and maintaining, in whole or in part, of any street in the district, subject to the consent of the governing body of the county or city in which the improvement is to be made.

(k) The construction and improvement of bridges, culverts, curbs, gutters, drains, and works incidental to the purposes specified in subdivision (j), subject to the consent of the governing body of the county or city in which the improvement is to be made.

(*l*) The conversion of existing overhead electric and communication facilities to underground locations, which facilities are owned and operated by either a "public agency" or a "public utility," as defined in Section 5896.2 of the Streets and Highways Code, and to take proceedings for and to finance the cost of the conversion in accordance with Chapter 28 (commencing with Section 5896.1) of Part 3 of Division 7 of the Streets and Highways Code, subject to the consent of the public agency or public utility responsible for the owning, operation, and maintenance of the facilities. Nothing in this section gives a district formed under this law the power to install, own, or operate the facilities that are described in this subdivision.

(m) To contract for ambulance service to serve the residents of the district as convenience requires, if a majority of the voters in the district, voting in an election thereon, approve.

(n) To provide and maintain public airports and landing places for aerial traffic.

(o) To provide transportation services.

(p) To abate graffiti.

SEC. 3. The Legislature finds and declares that the Lake San Marcos area in San Diego County constitutes a small community that does not receive adequate security services and that this service can best be provided through the establishment of a community services district. The Legislature further finds and declares that these facts and circumstances are not common to all areas, that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and that the enactment of Section 1 of this act as a special law is necessary for the solution of problems in the Lake San Marcos area in San Diego County.

CHAPTER 435

An act to amend Section 35294.1 of, and to add Section 35183 to the Education Code, relating to school districts.

[Approved by Governor September 23, 1993. Filed with Secretary of State September 24, 1993.]

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

SECTION 1. Section 35183 is added to the Education Code, to read:

35183. The Legislature declares that "gang-related apparel" is hazardous to the health and safety of the school environment. The governing board of any school district may adopt reasonable dress code regulations that prohibit pupils from wearing "gang-related apparel" if the governing board has determined that the regulations are necessary for the health and safety of the school environment. Upon approval of the dress code regulations by the governing board of the school district, individual schools in the school district may adopt reasonable dress code regulations as part of its school safety plan, pursuant to Section 35294.1.

SEC. 2. Section 35294.1 of the Education Code is amended to read:

35294.1. (a) School safety planning may include, but not be limited to:

(1) Assessing the current status of school crime committed on school campuses and at school-related functions.

(2) Identifying appropriate strategies and programs that will provide or maintain a high level of school safety.

(3) Developing an action plan, in conjunction with local law enforcement agencies, for implementing appropriate safety strategies and programs and determining the fiscal impact of executing the strategies and programs. The action plan may identify available resources which will provide for implementation of the plan.

(4) Establishing a schoolwide dress code, pursuant to Section 35183, that prohibits pupils from wearing "gang-related apparel." For those purposes, the parties participating in the development of the comprehensive school safety plan shall define "gang-related apparel." The definition shall be limited to apparel that, if worn or displayed on a school campus reasonably could be determined to threaten the health and safety of the school environment. Any schoolwide dress code established pursuant to this section shall be enforced on the school campus and at any school-sponsored activity by the principal of the school or the person designated by the principal. For the purposes of this paragraph, "gang-related apparel" shall not be considered a protected form of speech pursuant to Section 48950.

(b) Existing schoolsite councils may be responsible for developing a safety plan. In any event, the plan may be developed with the participation of teachers, classified employees, parents, law enforcement, school administrators, and, if deemed appropriate, students.

(c) It is the intent of the Legislature that schools develop school safety plans using existing resources, including the materials and services of the School Safety Partnership, pursuant to Chapter 2.5 (commencing with Section 32260) of Part 19. It is also the intent of the Legislature that schools use the handbook developed and distributed by the School/Law Enforcement Partnership Program entitled "Safe Schools: A Planning Guide for Action" in conjunction with developing their plan for school safety.

(d) It is the intent of the Legislature that schools shall not contract with private consultants to develop school safety plans.

(e) Grants to assist schools in implementing their school safety plan shall be made available through the School Safety Partnership as authorized by Section 32262 of the Education Code.

CHAPTER 436

An act to amend and renumber Section 25135.75 of, and to add Section 25135.8 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 23, 1993. Filed with Secretary of State September 24, 1993.]

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

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

(a) The Association of Bay Area Governments (ABAG) region, consisting of the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma and the City and County of San Francisco, has made significant strides in planning for the management of hazardous wastes generated within the region.

(b) Two counties within the ABAG region have submitted hazardous waste management plans to the Department of Toxic Substances Control that have been reviewed and approved by the department, and six counties within the ABAG region have resubmitted previously disapproved hazardous waste management plans in accordance with Article 3.5 (commencing with Section 25135) of Chapter 6.5 of Division 20 of the Health and Safety Code, except that the submissions were not fully in accordance with the deadlines established in that article.

(c) One county within the ABAG region was in the process of preparing a revised hazardous waste management plan but failed to

finalize it because the deadlines provided for submission had already passed.

(d) As a result, the Department of Toxic Substances Control has final hazardous waste management plans from six counties within the ABAG region and one county is ready to resubmit its final hazardous waste management plan to the department if the department will review the plan.

(e) In 1990, the boards of supervisors of the nine counties within the ABAG region formed the San Francisco Bay Area Hazardous Waste Management Capacity Allocation Committee through a memorandum of understanding. County hazardous waste management plans form the foundation of the committee's efforts. It was assumed, in 1990, that each of the counties would obtain an approved county hazardous waste management plan.

(f) The counties agreed in the memorandum of understanding to make the committee responsible for regional hazardous waste management capacity planning, and also for ensuring that the counties shoulder their fair share of responsibility for providing needed offsite hazardous waste treatment and disposal facilities.

(g) In 1992, the boards of supervisors of the nine counties within the ABAG region executed an interjurisdictional agreement which established the fair share method for the allocation of responsibility to provide hazardous waste management capacity within the jurisdictional boundaries of the counties.

(h) Each county agreed to provide siting opportunities for specific treatment or disposal categories, consistent with their own county hazardous waste management plan as set forth in the interjurisdictional agreement developed by the committee. This resulted in the initial fair share allocation of responsibility to provide siting opportunities as described in detail in the committee's report of August 1991, and summarized below as follows:

Santa Clara	Residuals Repository Capacity
Contra Costa	Incineration Capacity
Sonoma	Stabilization Capacity
Solano	Aqueous Metals Treatment Capacity
Alameda	Other Recycling Capacity
Napa	Other Recycling Capacity
Marin	Other Recycling Capacity
San Mateo and San Francisco	No allocation

San Mateo and San Francisco have met their fair share responsibility pursuant to the criteria set forth in the report.

(i) Each of the six counties within the ABAG region with a resubmitted plan has worked extensively with the regional office of the department in revising their plans. County staff have purposely worked with department staff members to ensure that resubmitted plans will be approvable.

(j) Although each county has been informally advised that their plans were recommended for approval by regional department staff to the headquarters staff, in September 1992, the department informed the counties with resubmitted plans that they would no longer take action to approve or disapprove county plans because of the expiration of statutory deadlines.

(k) It is a matter of government concern to use available financial resources in the most cost-effective manner possible. Since the counties within the ABAG region, as well as the state, have already invested tremendous resources into the effort to develop the plans and the plans were developed with the continual oversight and guidance of department staff, formal review should have minimal financial impact upon the department.

(*l*) It is vital to ensure the continuing primacy of local land use decisions that reflect regional and local environmental conditions through locally developed and implemented hazardous waste management plans. The counties within the ABAG region have demonstrated that regional cooperation can lead to sharing the burden of providing hazardous waste management capacity in the best interest of all the counties. To further implement this program, it is necessary for the plans to be approved.

SEC. 2. Section 25135.8 is added to the Health and Safety Code, to read:

25135.8. Notwithstanding Section 25135.7.5, the review and approval of county hazardous waste management plans for counties within the Association of Bay Area Governments region shall be governed in the following manner:

(a) Each county within the Association of Bay Area Governments region with an unapproved county hazardous waste management plan may submit the final plan adopted by the county to the department for review and approval or disapproval on or before January 15, 1994.

(b) Each county within the Association of Bay Area Governments region which submitted a final plan adopted by the county to the department after June 24, 1991, and prior to January 1, 1994, shall be considered to have met the condition of subdivision (a) with regard to the timely submission of county plans.

(c) The department shall, on or before July 1, 1994, review and either approve or disapprove the county hazardous waste management plans of the counties within the Association of Bay Area Governments region. The department shall approve the county hazardous waste management plan if the department makes all the determinations specified in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 25135.7.

SEC. 3. Section 25135.75 of the Health and Safety Code is amended and renumbered to read:

25135.7.5. (a) If the department disapproves a county hazardous waste management plan pursuant to subdivision (a) of Section 25135.7, or a regional hazardous waste management plan pursuant to

Section 25135.3, the department shall provide the county or regional council of governments, in writing and at the time of disapproval, with a detailed description of its reasons for disapproval of the plan. A county or regional council of governments with a disapproved hazardous waste management plan may submit a revised plan to the department one time only. A revised county or regional hazardous waste management plan shall be submitted to the department within 270 days of the effective date of the act adding this section, or within 270 days of plan disapproval if the plan is disapproved by the department after the effective date of the act adding this section. A county or regional council of governments shall notify the department of their intent to revise and resubmit a disapproved plan within 45 days of the effective date of the act adding this section, or within 45 days of plan disapproval, if the plan is disapproved after the effective date of the act adding this section. A resubmitted county or regional plan shall contain detailed responses to all of the reasons for disapproval of the plan described by the department. The department shall provide counties with informational guidelines on developing an approvable plan.

(b) Before submitting a revised county hazardous waste management plan to the department pursuant to this section, the revised plan shall be approved by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, as specified in subdivisions (f) and (g) of Section 25135.6. A city which fails to act upon a county plan revised pursuant to this section within 90 days after the plan has been submitted to the city by the county shall be deemed to have approved the revised plan.

(c) The department shall review and either approve or disapprove a county or regional hazardous waste management plan revised pursuant to subdivision (a) within 180 days of receiving the revised plan.

(1) The department shall approve a revised county hazardous waste management plan if the department makes all of the determinations in paragraphs (1), (2), (3), and (4) of subdivision (a) of Section 25135.7. If the department approves a revised county hazardous waste management plan pursuant to this section, the county shall comply with subdivision (b) of Section 25135.7, and each city within that county shall comply with subdivision (c) of Section 25135.7.

(2) The department shall approve a revised regional hazardous waste management plan if the department makes all of the determinations in subdivision (g) of Section 25135.3.

(d) A county which did not submit its plan to the department within the due dates for plan submittal established by subdivision (a) of Section 25135.7, or a county whose plan was not formally acted upon by the department by the February 28, 1990, deadline, may submit their plan to the department for review and approval or disapproval pursuant to the provisions governing the resubmittal of

revised plans established by this section.

(e) A council of governments which did not submit its plan to the department within the due dates for plan submittal established by Section 25135.3, or whose plan has not been formally acted upon by the department, may submit their plan to the department for review and approval or disapproval pursuant to the provisions governing the resubmittal of revised plans established by this section.

CHAPTER 437

An act to amend Section 65400 of, to repeal Section 65588.5 of, and to repeal and add Section 65040.5 of, the Government Code, relating to planning, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1993. Filed with Secretary of State September 24, 1993.]

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

SECTION 1. Section 65040.5 of the Government Code is repealed.

SEC. 2. Section 65040.5 is added to the Government Code, to read:

65040.5. (a) The office shall notify a city or county with a general plan that has not been revised within eight years.

(b) The office shall notify the Attorney General if a general plan of a city or county has not been revised within ten years.

SEC. 3. Section 65400 of the Government Code is amended to read:

65400. After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(a) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(b) Provide an annual report, by October 1 of each year, to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development regarding:

(1) The status of the plan and progress in its implementation, including the progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

(2) The degree to which its approved general plan complies with the guidelines developed and adopted pursuant to Section 65040.2, and the date of the last revision to the general plan.

SEC. 4. Section 65588.5 of the Government Code is repealed.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that cities and counties have a general plan that is in compliance with state law, and thereby ensure the orderly growth and development of those jurisdictions at the earliest possible time, it is necessary that this act go into effect immediately.

CHAPTER 438

An act relating to local agency formation.

[Approved by Governor September 23, 1993. Filed with Secretary of State September 24, 1993.]

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

SECTION 1. (a) A person may cause a sphere of influence to be amended once pursuant to this section if each of the following conditions is met:

(1) The affected territory consists of all or part of the agricultural preserve in the El Prado area of the County of San Bernardino.

(2) The person previously requested the amendment pursuant to Section 56428 and the commission disapproved the request.

(3) The affected territory is inhabited territory.

(4) The affected local agency is a city or a registered voter district.

(5) The one proposed amendment is approved no later than July 1, 1996.

(b) One proposed amendment to a sphere of influence may be submitted to the voters of the affected territory by filing an initiative petition with the executive officer, signed by not less than 10 percent of the number of voters in the affected territory. The petition section shall comply with the requirements of Sections 41 and 3516 of the Elections Code and contain a full and correct copy of the notice of intention and accompanying statement including the full text of the

proposed ordinance.

(c) Before circulating the petition in the affected territory, the proponents shall file with the executive officer a notice of intention to do so. The notice shall include the names and business or residence addresses of at least one but not more than five proponents of the petition, and shall state the nature of the proposed amendment, state the reasons for the amendment, and include a map and metes-and-bounds legal description of the affected territory.

(d) Any person filing a notice of intent with the executive officer shall pay a fee to be established by the commission not to exceed two hundred dollars ($200) to be refunded to the filer if, within one year of the date of filing the notice of intent, the executive officer certifies the sufficiency of the petition.

(e) The notice of intention may include a printed statement, not exceeding 500 words in length, stating the reasons for the proposed amendment. The notice shall be in substantially the following form:

Notice of Intention to Circulate Petition

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the County of _____ for the purpose of amending the sphere of influence of _____. A statement of the reasons of the proposed amendment is as follows: (optional statement).

(f) The executive officer shall immediately transmit a copy of any proposed amendment to the commission's legal counsel. Within 15 days after the proposed amendment is filed, the counsel shall provide and return to the executive officer a ballot title and summary for the proposed amendment. The ballot title may differ from any other title of the proposed amendment and shall express in 500 words or less the purpose of the proposed amendment. In providing the ballot title, the counsel shall give a true and impartial statement of the purpose of the proposed amendment in such language that the ballot title shall neither be an argument, nor be likely to create prejudice, for or against the proposed amendment.

(g) The executive officer shall furnish a copy of the ballot title and summary to the proponents of the proposed amendment. The proponents shall, prior to the circulation of the petition, publish the Notice of Intention, and the ballot title and summary of the proposed amendment in a newspaper of general circulation published in the affected territory.

(h) The ballot title and summary prepared by the counsel shall appear upon each section of the petition, above the text of the proposed amendment and across the top of each page of the petition on which signatures are to appear, in roman boldface type not smaller than 12-point. The ballot title and summary shall be clearly separated from the text. The heading of the proposed amendment shall be in substantially the following form:

Initiative Amendment to the Sphere of Influence of _____ to be Submitted Directly to the Voters

The legal counsel to the Local Agency Formation Commission has prepared the following title and summary of the chief purpose and points of the proposed amendment:

(Here set forth the title and summary prepared by the counsel. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

(i) The proponent may seek a writ of mandate requiring the ballot title or summary prepared by the counsel to be amended. The court shall expedite hearing on the writ. A peremptory writ of mandate shall be issued only upon clear and convincing proof that the ballot title or summary is false, misleading, or inconsistent with the requirements of this section.

(j) The executive officer shall ascertain the number of signatures required to sign the petition by obtaining the number of votes cast within the affected territory for all candidates for Governor at the last gubernatorial election preceding the publication of the notice of intention to circulate the initiative petition.

(k) The proponents may commence to circulate the petition among the voters of the affected territory for signatures by any registered voter of the county within the affected territory after publication of the title and summary prepared by the counsel. Each section of the petition shall bear a copy of the notice of intention and the title summary prepared by the counsel.

(*l*) The petition section shall have attached to it an affidavit to be completed by the circulator. The affidavit shall be substantially in the same for as set forth in Section 44 of the Elections Code.

(m) Signatures shall be secured and the petition shall be presented to the executive officer for filing within 180 days from the date of receipt of the title and summary, or after termination on any action for a writ of mandate pursuant to subdivision (i) and, if applicable, after receipt of an amended title or summary or both, whichever occurs later.

(n) During the circulation of the petition, the commission may refer the proposed amendment to the executive officer for a report on any or all of the following:

(1) Its fiscal impact.

(2) Its effect on the approved spheres of influence of the affected local agencies.

(3) Any other matters that the commission requests to be in the report.

(o) The report shall be presented to the commission and to the governing body of each affected local agency within the time prescribed by the commission but no later than 30 days after the executive officer certifies to the commission the sufficiency of the petition.

(p) The petition shall be filed by the proponents, or by any person

or persons authorized, in writing, by the proponents. All sections of the petition shall be filed at one time. Any sections of the petition not so filed shall be void for all purposes. Once filed, no petition section shall be amended except by order of a court of competent jurisdiction.

(q) When the petition is filed, the executive officer shall determine the total number of signatures affixed to the petition. If, from this examination, the executive officer determines that the number of signatures, prima facie, equals or is in excess of the minimum number of signatures required, the executive officer shall examine the petition in accordance with Section 3707 or 3708 of the Elections Code. If, from this examination, the executive officer determines that the number of signatures, prima facie, does not equal or exceed the minimum number of signatures required, no further action shall be taken.

(r) Except as provided in subdivision (s), within 30 days from the date of filing of the petition, excluding Saturdays, Sundays, and holidays, the executive officer shall examine the petition, and from the records of registration ascertain whether or not the petition is signed by the requisite number of voters. A certificate showing the results of this examination shall be attached to the petition. In determining the number of valid signatures, the executive officer may use the duplicate file of affidavits maintained, or may check the signatures against facsimiles of voters' signatures, provided that the method of preparing and displaying the facsimiles complies with law. The executive officer shall notify the proponents of the petition as to the sufficiency or insufficiency of the petition. If the petition is found insufficient, no further action shall be taken. However, the failure to secure sufficient signatures, shall not preclude the filing of a new petition on the same subject, at a later date. If the petition is found sufficient, the executive officer shall certify the results on the examination to the commission at its next regular meeting.

(s) Within 30 days from the date of filing of the petition, excluding Saturdays, Sundays, and holidays, if, from the examination of petitions pursuant to subdivision (r), more than 500 signatures have been signed on the petition, the executive officer may use a random sampling technique for verification of signatures. The random sample of signatures to be verified shall be drawn in a manner that every signature filed with the executive officer shall be given an equal opportunity to be included in the sample. The random sampling shall include an examination of at least 500 or 3 percent of the signatures, whichever is greater. If the statistical sampling shows that the number of valid signatures is within 95 to 110 percent of the number of signatures of qualified voters needed to declare the petition sufficient, the executive officer shall examine and verify each signature filed. In determining from the records of registration, what number of valid signatures are signed on the petition, the executive officer may use the duplicate file of affidavits maintained, or may check the signatures against facsimiles of voters' signatures,

provided that the method of preparing and displaying the facsimiles complies with law. The executive officer shall attach to the petition, a certificate showing the result of this examination, and shall notify the proponents of either the sufficiency or insufficiency of the petition. If the petition is found insufficient, no action shall be taken on the petition. However, the failure to secure sufficient signatures shall not preclude the filing later of an entirely new petition to the same effect. If the petition is found to be sufficient, the executive officer shall certify the results of the examination to the commission at its next regular meeting.

(t) When it is legally possible to hold a special election within six months prior to a regular election, the commission may submit the proposed amendment at that regular election instead of at a special election. In all other cases, the commission shall call a special election to be held in the affected territory not less than 88 nor more than 103 days after the date of the presentation of the proposed amendment to it. However, to avoid holding more than one election within any six months, the date for holding the special election may be fixed later than 103 days after the date of the presentation of the proposed amendment to the commission, but at as early a date as practicable after the expiration of the six months. Not more than one special election may be held pursuant to this act during any period of six months.

(u) If the initiative petition is signed by voters not less in number than 10 percent of the entire vote cast in the affected territory for all candidates for Governor at the last gubernatorial election preceding the publication of the notice of intention to circulate an initiative petition, and the ordinance petitioned for is not required to be, or for any reason is not, submitted to the voters at a special election, the amendment, without alteration, shall be submitted by the commission to the voters in the affected territory at the next statewide election occurring not less than 88 days after the date of the order, or after the commission is presented with a report prepared pursuant to subdivision (n).

(v) The executive officer shall publish a notice of the election pursuant to Sections 2554 and 2653 of the Elections Code.

(w) Whenever one proposed amendment to a sphere of influence is required by this act to be submitted to the voters at the election, the executive officer shall cause the proposed amendment to be printed. A copy of the amendment shall be made available to any voter upon request.

(x) Article 3 (commencing with Section 3780) Chapter 2 of Division 5 of the Elections Code shall govern the procedures for submitting arguments for one proposed amendment to a sphere of influence.

(y) One proposed amendment to a sphere of influence may be voted upon at the same election.

(z) If a majority of voters voting on a proposed amendment in the affected territory to a sphere of influence vote in its favor, the sphere

of influence shall be deemed amended upon the date the vote is declared by the commission, and shall go into immediate effect.

(aa) No amendment to a sphere of influence proposed by initiative petition and adopted by the voters shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original proposal. In all other respects, an amendment proposed by initiative petition and adopted shall have the same force and effect as any amendment to a sphere of influence approved by the commission.

(ab) The commission may establish a schedule of fees for the costs of carrying out this section, provided that the fees not exceed the estimated reasonable cost of providing the service for which the fee is charged. The commission shall impose the fees pursuant to Section 66016.

(ac) All proper expenses incurred in conducting an election pursuant to this section, unless otherwise provided by agreement between the proponents and the local agency whose sphere of influence is being amended, shall be paid by the local agency if the amendment is successful, or by the proponents if the amendment is not successful.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the agricultural preserve in the El Prado area of the County of San Bernardino. The facts constituting the special circumstances are:

After repeated attempts, the registered voters and landowners of the El Prado area have been unable to persuade the San Bernardino Local Agency Formation Commission to amend the spheres of influence of the special districts and cities in the area to include their property. This area of approximately 15,000 acres is uniquely situated outside the boundaries of three cities that could provide the affected territory with desired levels of public services and land use policies.

SEC. 3. This act shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

CHAPTER 439

An act to amend Sections 16649.80, 16649.82, 16649.83, 16649.84, 16649.87, and 16649.88 of the Government Code, relating to state trust funds.

[Approved by Governor September 24, 1993. Filed with Secretary of State September 24, 1993.]

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

SECTION 1. Section 16649.80 of the Government Code is amended to read:

16649.80. The definitions in this section shall govern the construction and interpretation of this chapter.

(a) "Investment" or "invest" means the commitment of funds or other assets to a business firm, including a loan or other extension of credit made to that firm, or security given for the other assets to that business enterprise, or the beneficial ownership or control of a share or interest in that business firm, or of a bond or other debt instrument issued by that business firm.

(b) "Business firm" means any foreign or domestic organization, association, corporation, partnership, venture, or other entity, its subsidiary, or affiliate which exists for profitmaking purposes or to otherwise secure economic advantage, other than a financial institution.

(c) "Financial institution" means any foreign or domestic bank, bank holding company, savings and loan association, or credit union, or any foreign or domestic insurance company, brokerage firm, securities firm, investment company, mortgage banking company, finance company, personal property broker, mortgage loan broker, or consumer credit company, or any affiliate or subsidiary thereof.

(d) "Business arrangements" means projects, ventures, undertakings, contractual relations, or other efforts requiring ongoing or periodic performance by either or both parties.

(e) "Discriminatory business practices" means business arrangements that are prohibited by Sections 16721 and 16721.5 of the Business and Professions Code.

(f) "State trust moneys" means funds administered by the Public Employees' Retirement Fund, the Legislators' Retirement Fund, the State Teachers' Retirement Fund, the Judges' Retirement Fund, the Volunteer Firefighter Fund, the General Fund portion of the University of California Retirement Fund, and any funds invested pursuant to this part.

(g) "State trust fund" means the Public Employees' Retirement Fund, the Legislators' Retirement Fund, the State Teachers' Retirement Fund, the Judges' Retirement Fund, the Volunteer Firefighter Fund, and any investment fund created by this part.

(h) "State moneys" means all money, bonds, and securities in

possession of or collected by any state agency.

(i) "Compliance with the Arab League's economic boycott of Israel" means taking any action, with respect to the boycott of Israel by Arab countries, which is prohibited by the United States Export Administration Act of 1979.

SEC. 2. Section 16649.82 of the Government Code is amended to read:

16649.82. Section 16649.81 shall not apply to any business firm which, by resolution of its governing body, adopts a policy not to renew existing, expand existing, or engage in new, discriminatory business practices in furtherance of or in compliance with the Arab League's economic boycott of Israel. The resolution required by this section shall include the following statement: "_____ (name of business firm) agrees not to renew existing, expand existing, or engage in new, discriminatory business practices in furtherance of or in compliance with the Arab League's economic boycott of Israel."

SEC. 3. Section 16649.83 of the Government Code is amended to read:

16649.83. On or after January 1, 1994, state trust moneys shall not be used to make additional or new investments or to renew existing investments in financial institutions that engage in discriminatory business practices in furtherance of or in compliance with the Arab League's economic boycott of Israel.

SEC. 4. Section 16649.84 of the Government Code is amended to read:

16649.84. Section 16649.83 shall not apply to any financial institution which, by resolution of its governing body, adopts a policy not to renew existing, expand existing, or engage in new, discriminatory business practices in furtherance of or in compliance with the Arab League's economic boycott of Israel. The resolution required by this section shall include the following statement: "_____ (name of financial institution) agrees not to renew existing, expand existing, or engage in new, discriminatory business practices in furtherance of or in compliance with the Arab League's economic boycott of Israel."

SEC. 5. Section 16649.87 of the Government Code is amended to read:

16649.87. Beginning January 1, 1995, and continuing thereafter until January 1, 1998, state trust funds shall annually reduce by one-third the value of their respective investments in business firms and financial institutions that engage in discriminatory business practices in furtherance of or in compliance with the Arab League's economic boycott of Israel.

SEC. 6. Section 16649.88 of the Government Code is amended to read:

16649.88. Effective January 1, 1998, state trust funds shall not make or hold any investment in any business firm or financial institution that engages in discriminatory business practices in furtherance of or in compliance with the Arab League's economic

boycott of Israel.

CHAPTER 440

An act to add Section 7514 to the Government Code, relating to public pensions and retirement.

[Approved by Governor September 24, 1993. Filed with Secretary of State September 24, 1993.]

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

SECTION 1. Section 7514 is added to the Government Code, to read:

7514. (a) Notwithstanding any other provision of law except Chapter 5 (commencing with Section 16640) and Chapter 7 (commencing with Section 16649.80) of Part 2 of Division 4 of Title 2, any state or local public retirement system may invest, subject to and consistent with the standard for prudent investment set forth in Section 17 of Article XVI of the California Constitution, its assets in the bonds or other evidences of indebtedness unconditionally guaranteed by any foreign government that has met the payments of similar bonds or other evidences of indebtedness when due.

(b) A portion of the assets invested pursuant to this section may be used to purchase rated or unrated bonds, notes, or other instruments unconditionally guaranteed by Canada, Israel, or Mexico.

CHAPTER 441

An act to add and repeal Chapter 5.8 (commencing with Section 8445) of Division 1 of Title 2 of the Government Code, relating to economic conversion, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Chapter 5.8 (commencing with Section 8445) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 5.8. ECONOMIC CONVERSION

8445. The Defense Conversion Matching Grant Program is hereby established to provide matching grants and technical

assistance to California nonprofit organizations, public agencies, consortia, and businesses for projects qualifying for federal funds under the federal Technology Reinvestment Program and other programs providing incentives for economic conversion.

8446. The Defense Conversion Council shall identify and advise the Governor and the chairpersons of the Senate and Assembly fiscal committees of federal matching programs and appropriate state funding sources and amounts for the Defense Conversion Matching Grant Program.

8447. The Office of Strategic Technology shall establish a schedule for accepting and evaluating on a competitive basis proposals that request commitments for state financial assistance or endorsement.

8448. The council shall adopt policies deemed necessary to implement the Defense Conversion Matching Grant Program.

8449. Regional technology alliances shall be primarily responsible for evaluating and ranking proposal applications for their designated geographical areas. Proposal applications shall be sent to the regional technology alliance for the region. If a proposal is statewide in nature or if no regional technology alliance has been designated for a geographical area, applications may also be sent directly to the Office of Strategic Technology in the Trade and Commerce Agency for evaluation and ranking.

8450. For applications in their regions, the regional technology alliance shall evaluate and rank proposals for applicable state and federal funding sources and forward the evaluations and rankings to the Office of Strategic Technology. If a proposal is statewide in nature or if no regional technology alliance has been designated for a geographical area, the Office of Strategic Technology shall evaluate and rank the proposal. Proposals shall be evaluated and ranked based on criteria which shall include, but not be limited to:

(a) Immediate and measurable job creation and economic development potential for California.

(b) Clearly identified product line and market.

(c) Training component that will upgrade the skills of the proposed project's workers.

(d) Demonstrated links with the California Manufacturing Excellence Program, the California Small Business Development Center Program, the California Supplier Improvement Program, business incubators, local educational or business training institutions if the linkages are applicable and will benefit the project.

(e) Proposers and partners are small businesses, including those owned by women, minorities, and disabled veterans.

8451. Eligible applications shall include all of the requirements in Section 15379.4. Only applications scoring a minimum point total or the highest ranking shall be transmitted to the Office of Strategic Technology.

8452. Recommendations for state funding commitments or endorsements shall be made by review panels established by the

Office of Strategic Technology and approved by the council. The committee shall be composed of a nonvoting representative from each regional technology alliance, and the other members, which may include representatives from the state agency responsible for administering the grant funds.

8453. (a) In making recommendations, the review panels shall apply the following criteria and priorities as determined by the council and the agency responsible for administering the funding source. The panels' review shall consist of at least:

(1) A determination as to whether the project is eligible, the application is complete, the proposed use of funding is consistent with the requirements of the funding source, a determination that there is no conflict of interest, and any other technical evaluation determined necessary.

(2) A review to determine a single, consolidated list of proposals ranked by the degree to which each meets the council's criteria described in Section 8450.

(3) The review panels shall give additional priority to proposals from areas of the state that have been most severely affected by reductions in federal defense spending, resulting in significant job losses and dislocation.

(b) All applications transmitted to the Office of Strategic Technology which received a positive review shall be transmitted to the Defense Conversion Council. The council shall make funding recommendations on the proposals receiving the highest ranking, unless it finds that changes to the ranking are necessary due to noncompliance with the council criteria, conflicts of interest, or lack of geographic diversity.

(c) Any regional technology alliance which has an application which received a negative review, or a ranking which the alliance finds unacceptable, may appeal the panel's decision to the Defense Conversion Council which shall only overturn the panel's decision if it finds clear and convincing evidence that the panel's determination or ranking was unsubstantiated.

8454. Final recommendations shall be made by the council and shall be transmitted to the appropriate agency responsible for administering the funding source. A report on the funding determination shall be transmitted to the Governor and the fiscal committee chairs of the Senate and Assembly. The council shall also notify the regional technology alliance and applicant if a funding decision has been made.

8455. (a) Notwithstanding Section 16361, and to the extent permitted by federal law, four million dollars ($4,000,000) of the funds received by the state from the Petroleum Violation Escrow Account, as defined by Section 155 of the Further Continuing Appropriation Act of 1983 (Public Law 97-377) or other federal law, and consisting of federal overcharge funds available pursuant to court judgments or federal agency orders, that remain after the state has met the disbursement requirements of the Katz Schoolbus Fund,

shall be appropriated to the California Energy Commission for the Defense Conversion Matching Grant Program.

(b) On and after February 1, 1994, upon order of the Director of Finance, the Controller shall transfer one million five hundred thousand dollars ($1,500,000), appropriated from the Petroleum Violation Escrow Account to the Trade and Commerce Agency in Chapter 1 of the Statutes of 1993 of the 1993–94 First Extraordinary Session of the Legislature to the California Energy Commission for support of the Defense Conversion Matching Grant Program.

8456. The Trade and Commerce Agency shall adopt regulations to implement the programs authorized in this chapter. The agency shall adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1, and for purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall be repealed within 180 days after their effective date, unless the agency complies with Chapter 3.5 (commencing with Section 11340) of Part 1 as provided in subdivision (e) of Section 11346.1.

SEC. 2. This act shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 1999, deletes or extends that date.

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

In order to provide assistance to California public and private organizations and businesses responding to severe economic conversion problems, this act must take effect immediately.

CHAPTER 442

An act to add Article 3.2 (commencing with Section 15339.1) to Chapter 1 of Part 6.7 of Division 3 of Title 2 of the Government Code, relating to economic development.

[Approved by Governor September 23, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The California economy is currently in a prolonged recession due to a number of factors, among them the "downsizing" of large corporations, cutbacks in national defense programs, and the corresponding effects on defense related private industry.

(b) Most of the future job growth potential in the state will be in small to midsize businesses.

(c) A majority of California's small businesses fail in the first five years of operation due to a lack of management and business skills.

(d) There is a great need for and severely limited availability of financing for startup businesses.

(e) Business incubators have proven to be an effective means for the creation and success of small businesses.

(f) It is in the interest of the Legislature and the State of California to encourage, promote, and invest in new small business enterprises, and to ensure that those enterprises have available to them technical, management, and business counseling to provide the highest probability of success. The creation of the New Business Incubator Enterprise Program is intended to achieve these goals.

SEC. 2. Article 3.2 (commencing with Section 15339.1) is added to Chapter 1 of Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

Article 3.2. New Business Incubator Enterprise Program

15339.1. This article shall be known and may be cited as the New Business Incubator Enterprise Program Act.

15339.2. For purposes of this chapter, the following definitions apply:

(a) "Board" means the Small Business Development Board established by Section 14020 of the Corporations Code.

(b) "Program" means one of the New Business Incubator Enterprise Programs established pursuant to Section 15339.3.

(c) "New Business Incubator Enterprise" or "Incubator" means a facility that allows new small businesses to increase their probability of success through sharing needed equipment, services, and facilities, including substantially all of the following:

(1) Reception and meeting areas.

(2) Secretarial services.

(3) Accounting and bookkeeping services.

(4) Research libraries.

(5) Onsite financial, management, and technical counseling.

(6) Flexible lease arrangements for flexible space.

(7) Computer and word processing facilities.

(8) Office furniture rentals.

(9) Management and entrepreneurial training programs that have an entry and exit policy.

15339.3. The board shall determine those enterprises that are qualified to participate in the New Business Incubator Enterprise Program. An incubator shall be deemed to be a qualified New Business Incubator Enterprise if the board determines that the enterprise meets all of the following criteria, and any additional criteria established by the board:

(a) The enterprise meets the definition of a New Business

Incubator Enterprise specified in subdivision (d) of Section 15339.2.

(b) The enterprise has a management team that may be a combination of full- and part-time staff, oncall consultants, and pro bono professional and business leaders that are experienced in the following:

(1) Requirements and dynamics relating to startup and emerging businesses.

(2) Communicating with local government, business resources, and investment and funding sources.

(3) Training, advising, and consultation.

(c) The additional criteria developed by the board may include, but shall not be limited to, the appropriateness of a specific enterprises' counseling and assistance program to the economic and educational needs of the area and of the tenants it intends to serve, and the requirement of additional management staff with expertise in a specialized area.

15339.4. The New Business Incubator Enterprise Program shall consist of the loan programs, administered by the Office of Small Business, that are listed in subdivisions (a) to (d), inclusive. No loan shall be made unless the office determines that the borrower or guarantor has the ability to collateralize and repay the loan. An eligible applicant must be a small business tenant of a New Business Incubator Enterprise.

(a) Seed Capital Financing Program. This program would provide financing of up to ten thousand dollars ($10,000) to qualified applicants for startup businesses. All loans shall be fully guaranteed by the incubator.

(b) First Phase Financing Program. This program shall provide to qualified applicants a seven-year fully amortized note of up to fifty thousand dollars ($50,000) at a fixed interest rate equal to the rate earned by the Surplus Money Investment Fund at the time of the loan commitment. Each loan shall be partially guaranteed by the incubator. In developing the regulation to clarify and make specific the partial guarantee included in both this subdivision and subdivisions (c) and (d), the Trade and Commerce Agency shall establish the incubator loan guarantee percentage. The percentage shall not be less than 25 percent nor more than 75 percent and shall be based on the percentage of the business owned by the incubator.

(c) Second Phase Financing Program. This program shall provide to qualified applicants a seven-year fully amortized note of up to one hundred thousand dollars ($100,000) at a fixed interest rate equal to the rate earned by the Surplus Money Investment Fund at the time of the loan commitment. Each loan shall be partially guaranteed by the incubator. The maximum loan amount shall not exceed four times the appplicant's working capital.

(d) Low Income or Minority Community Financing Program. Funds for this program shall be available under the following terms with priority given to business created in areas experiencing severe economic hardship. This program shall provide to qualified

applicants a seven-year fully amortized note with a fixed interest rate equal to the rate earned by the Surplus Money Investment Fund at the time of the loan commitment. Each loan shall be partially guaranteed by the incubator. The maximum loan amount shall not exceed one hundred thousand dollars ($100,000).

15339.5. No incubator may have at any one time more than 30 percent of its tenants receiving funds from the New Business Incubator Enterprise Program for a period in excess of six months. Exceptions may be made, and shall be determined on a case by case basis, if the incubator is located in an area experiencing severe economic hardship but in no case shall more than 50 percent of the tenants receive program funds. In determining the percentage, the agency shall utilize both the revenue paid by the business to the incubator, and the number of businesses within the incubator. The incubator shall not charge additional fees or charges to a borrower because the borrower has received a loan guaranteed by the incubator.

15339.7. The Trade and Commerce Agency shall take no action to implement this article unless funds sufficient to administer the program are appropriated. Upon appropriation, the agency shall adopt regulations necessary to implement this article. The agency shall adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1. The adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall be repealed within 180 days after their effective date unless the agency complies with Chapter 3.5 (commencing with Section 11340) of Part 1 pursuant to subdivision (e) of Section 13346.1.

SEC. 3. This act shall not become operative unless Assembly Bill 1246 of the 1993–94 Regular Session of the Legislature is also enacted.

CHAPTER 443

An act to add Chapter 6 (commencing with Section 15397) to Part 6.7 of Division 3 of Title 2 of the Government Code, relating to economic development.

[Approved by Governor September 23, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Chapter 6 (commencing with Section 15397) is added to Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 6. CALIFORNIA PROCUREMENT AND TECHNICAL ASSISTANCE NETWORK

15397. (a) As California faces another fiscal year of state budget deficit, new strategies must be identified to use existing human, capital, and physical resources to the maximum advantage to fast track new employment opportunities and strengthen economic prosperity in the state.

(b) State procurement dollars are one capital resource that may be maximized to achieve overall economic benefits to the state.

(c) According to the Department of General Services, California annually expends approximately four billion dollars ($4,000,000,000) in total procurement dollars in procurement categories that include construction, electronic data processing, telecommunications, supplies, and physical and consulting services.

(d) A June 1992 report by the John F. Kennedy School of Government at Harvard University, Information Technology and Government Procurement, noted that information technology can be used to expand and improve procurement markets by making it easier for buyers and qualified sellers to find and communicate interactively with each other.

(e) Increased access to federal, state, and local public contract opportunities by California companies, including small and emerging businesses, can be provided through electronic marketing of procurement information.

(f) Increasing competition for public opportunities through electronic marketing has the added benefit of expanding the vendor base of qualified suppliers, resulting in high quality and more competitively priced procurements and assisting federal, state, and local governments meet participation goals for minority, women, and disabled veteran owned businesses in public contracting.

(g) A model Procurement Assistance Center is presently in operation at De Anza Community College, providing assistance to California companies through an electronic procurement network employing information technology to improve access to public contracting opportunities by linking buyers and qualified sellers through bid matching mechanisms.

15397.1. (a) There is hereby created in state government a California Procurement and Technical Assistance Network (CAPTAN).

(b) The network shall be incorporated as a component within the existing statewide California Community Colleges Economic Development Network under the auspices of the Chancellor of the California Community Colleges and in collaboration with the Secretary of Trade and Commerce.

(c) In addition, the network shall collaborate with and provide support to the Department of General Services and other state and local public contracting agencies, small business development centers, centers for international trade development, centers for

applied competitive technology, the California Supplier Improvement Program, the California Small Business Innovation Research Program, local economic development organizations, and other related community economic development programs and initiatives.

15397.2. The California Procurement and Technical Assistance Network shall be comprised of regional procurement assistance centers located within existing facilities, such as small business development centers, or any other appropriate economic development entities, in order to provide specified procurement services to businesses and industries, as well as public sector entities. The network shall be designed to create a system for electronic marketing of public contract opportunities at the federal, state, and local level.

15397.3. The California Procurement and Technical Assistance Network, through a statewide network of regional procurement assistance centers, shall provide, on a fee basis, the following procurement services:

(a) Notification of bids through an automated bid match system utilizing the following components:

(1) An automated vendor data base.

(2) Electronic public contract data utilizing Commerce Business Daily, federal contract opportunities within the federal Department of Defense, the federal government, the State of California, local governments, and public utilities.

(b) Bid preparation assistance and technical support.

(c) Pre-award survey assistance.

(d) Contract administration support.

(e) Total Quality Management training.

(f) Provision of training workshops to strengthen the state network and keep regional procurement assistance centers knowledgeable of constantly changing government procurement regulations and laws.

15397.4. The Chancellor of the California Community Colleges, in collaboration with the Secretary of Trade and Commerce, shall implement this chapter only upon the availability of sufficient nonstate public and private sector funding, including federal funding sources. The resources of the California Competitive Technology Program may also be utilized in support of the California Procurement and Technical Assistance Network, upon successful competitive application to the Competitive Technology Program Fund.

CHAPTER 444

An act to add and repeal Article 3.6 (commencing with Section 15346) of Chapter 1 of Part 6.7 of Division 3 of Title 2 of the Government Code, relating to defense conversion, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Article 3.6 (commencing with Section 15346) is added to Chapter 1 of Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

Article 3.6. California Defense Conversion Act of 1993

15346. This article shall be known and may be cited as the California Defense Conversion Act of 1993.

15346.1. The Legislature declares as follows:

(a) For over half a century, California's industries, universities, businesses, and workers have contributed to our nation's defense, utilizing their capital, talents, and skills to develop and bring to production important new technologies and advanced weapons systems, aircraft, and missiles.

(b) The nation now confronts the challenge of converting our defense dependent economic sector to meet the rigors of commercial competition. California industries and workers have earned their government's gratitude and deserve our assistance in this transition. Communities that have housed military facilities require assistance as those facilities close due to reductions in military spending.

(c) Defense spending in California peaked at sixty billion dollars ($60,000,000,000) in 1988. Since then, it has decreased by 16 percent with the resulting loss of 126,000 jobs. The Commission on State Finance projects a further 22 percent reduction to thirty-seven billion dollars ($37,000,000,000) in 1997, with a loss of another 81,000 jobs. California is expected to experience the most severe impact of defense cuts in 1994.

(d) California has experienced two rounds of base closures to date and six bases were closed in round one in 1988 and 11 bases were closed in round two in 1991. An additional 10 bases are proposed for closure as part of round three in 1993.

(e) California will lose more federal payroll jobs from its 27 military base closures under rounds one to three than all of the rest of the states put together. The reduced military payroll (military and civilian employees) in California will be about 101,000 jobs. About 300,000 private sector defense industry jobs in California will be lost.

(f) California needs a coordinated defense conversion program within the state in order to transition to a lower level of defense expenditures and peacetime economic pursuits.

(g) Just as the state is a leader in the nation's defense effort, so it must now assume a leadership role in converting to a peacetime economy. That role will require a coordinated effort to ensure that California benefits from federal programs, assists local governments to plan and provide for needed services, encourages the development of new technologies and their application by California industries, provides worker retraining, and builds an infrastructure for the future.

15346.2. The Legislature recognizes that fundamental shifts occur within the economy that result in the closure of existing production facilities, retail establishments, and business institutions, or in severe reduction of employment opportunities. Reductions in the federal defense budget are creating that shift. Therefore, to promote integration in federal, state, and local government defense conversion policies and programs, to foster an active information exchange between public and private sectors, and to build on the wealth of human and industrial capital that comprises California's defense dependent economic sector, the California Defense Conversion Council is hereby created in the Trade and Commerce Agency.

15346.3. The California Defense Conversion Council shall consist of the following members, who shall be appointed as provided in this section and shall reflect, as much as possible, the population of the state with regard to sex, race, ethnic background, and geographic distribution:

(a) The Governor shall have nine appointees which may include, but are not limited to, the following:

(1) The Secretary of the Trade and Commerce Agency.

(2) The Secretary of the Environmental Protection Agency.

(3) The Director of the Employment Development Department.

(4) The Director of the Office of Planning and Research.

(5) The Director of the Energy Commission.

(6) The Director of Transportation.

(7) The Director of the Employment Training Panel.

(b) The Speaker of the Assembly shall have two appointees which may include, but are not limited to, members representing labor, business, or local government.

(c) The Senate Committee on Rules shall have two appointees which may include, but are not limited to, members representing labor, business, or local government.

(d) One representative annually nominated to the council from the regional technology alliances in northern California.

(e) One representative annually nominated to the council from the regional technology alliances in southern California.

(f) Nonvoting members including:

(1) The President of the University of California.

(2) The Chancellor of the California State University.
(3) The Chancellor of the California Community Colleges.
(4) The Speaker of the Assembly or his or her designee.
(5) The President pro Tempore of the Senate or his or her designee.
(6) Members of regional technology alliances not represented under subdivisions (d) and (e).

15346.4. (a) The members of the council shall elect a member to be the chairperson of the council.

(b) The Office of Strategic Technology shall provide staff support to the council.

(c) It shall be the purpose of the council to provide a central clearinghouse for all base reuse and defense conversion activities in the state.

15346.5. The council shall do all of the following:

(a) Develop and recommend to the Governor and the Legislature a strategic plan for federal, state, and local defense conversion and training programs. The plan shall address the state's role in assisting communities impacted by base closures. The opportunity shall be provided for public review and comments on the strategic plan prior to release to the Governor and the Legislature.

(b) Provide a central location for all base reuse, community assistance and training funding, regulations, and application procedures to expedite the transfer of state and federal funds to state and local projects in a timely and efficient manner, and to provide technical assistance to communities and businesses.

(c) Provide a central location for all defense conversion funding, regulations, and application procedures to expedite the transfer of funds to state and local projects in a timely and efficient manner.

(d) Serve as a central location for input and information, including needs, issues, and recommendations from businesses, industry representatives, labor, local government, and communities.

(e) Identify available state and federal resources to assist businesses (with emphasis on small and minority, women, and disabled veteran-owned businesses), workers, communities, and educational institutions affected by defense expenditure reduction.

(f) Provide one-stop coordination, maintain and disseminate information, standardize state endorsement procedures and develop fast-track review procedures for proposals seeking state funds to match federal defense conversion funding programs.

(g) Review recommendations for state funding awards by regional technology alliances.

(h) Establish criteria under which regional technology alliances may apply for designation.

(i) Where funds and resources are available, maintain and establish data bases in such fields as defense-related companies, industry organization proposers for state and federal defense industry conversion, community assistance, training, and base reuse funds, and provide electronic access to the data bases.

(j) Conduct outreach to entities and parties involved in defense conversion across the state and provide a network to facilitate assistance and coordination for all defense conversion activities within the state.

(k) The council shall help develop and coordinate state advocacy efforts on the federal level.

(*l*) The council shall conduct an evaluation of the impact of the state's matching fund expenditures on the California economy. This evaluation shall be transmitted to the Legislature on or before January 1, 1995, and again on January 1, 1997, and shall consider job growth, increased state and local revenues, and other factors for measuring the effectiveness of this program.

15346.6. (a) Each regional technology alliance shall perform the following activities:

(1) Raise and leverage funds from multiple public and private sources to support technology development, commercialization, and application, and industry competitiveness particularly in response to defense industry conversion and diversification.

(2) Assist in the formation of new businesses.

(3) Maintain an electronic network and access to data bases that encourages business ventures.

(4) Coordinate with activities and efforts of industry, academia, federal laboratories, and governments.

(5) Recommend to the Defense Conversion Council administrative actions or programs that could assist California's defense-dependent industries to successfully convert to commercial markets.

(6) Provide information about state and federal defense conversion programs, including, but not limited to, job training, economic development, industrial modernization, dual-use technology, new management techniques, and technology development and transfer.

(7) Identify environmental industries.

(b) Each regional technology alliance may also perform, but not be limited to, the following activities:

(1) Assist in identifying businesses that could benefit from defense conversion programs and defense-dislocated workers who require employment and training opportunities.

(2) Assist and provide coordination in determining job opportunities within and outside of the defense industry for which displaced workers could be retrained and placed.

(3) Serve as a forum for industrywide networking linking producers, suppliers, and consumers.

(4) Assist individual businesses and industry consortia in applying for state and federal defense conversion program funds.

(5) Provide information and assistance in upgrading individual businesses and industrywide production and management processes.

(6) Provide any other information that will assist defense conversion programs and activities.

15346.7. (a) The council shall establish criteria under which regional technology alliances may apply to the council to be designated for purposes of this article if they meet the necessary qualifications.

(b) Criteria for designation of regional technology alliances shall include, but not be limited to the following:

(1) Comprehensive regional assessment of needs and impact of defense cuts on the region.

(2) Organizational responsiveness to regional assessment of needs.

(3) Active industry participation and support.

(4) Leverage of state funds.

(5) Participation, support, and coordination among academia, federal laboratories, industry, labor, the financial sector, and local government.

(6) Management capacity, including knowledge of and experience with state contracting procedures.

(7) Experience and expertise in the delivery of services and resources, programs and activities for technology development, commercialization, application, and competitiveness at the regional level particularly in response to defense industry conversion and diversification.

(8) Ability to benefit from and contribute to the integrated networking system established by the council.

(9) Representation of small businesses, including, but not limited to, minority, women, and disabled veteran-owned businesses where possible.

(c) The council shall establish criteria for funding projects.

15346.8. (a) The council shall meet at the times and in places it deems necessary. Whenever possible, meetings shall be held in Sacramento in state facilities.

(b) Under no circumstances shall the council permit absentee or proxy voting at any of its proceedings.

(c) Council members may receive reimbursement for travel costs directly related to council attendance if funding is available.

(d) The council shall apply for grants and may seek contributions from private industry to fund its operations.

(e) The council shall actively solicit and accept funds from industry, foundations, or other sources to promote and fund research and development of dual technologies, to identify alternative applications of military technologies, to initiate market research for identifying possible defense conversion products, to establish worker and business training programs, and to operate pilot projects to evaluate and demonstrate useful approaches. These efforts should be coordinated with the regional technology alliances.

15346.9. The Trade and Commerce Agency shall adopt regulations to implement the programs authorized in this chapter. The agency shall adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of

Part 1, and for purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall be repealed within 180 days after their effective date, unless the agency complies with Chapter 3.5 (commencing with Section 11340) of Part 1 as provided in subdivision (e) of Section 11346.1.

SEC. 2. This act shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1999, deletes or extends that date.

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

In order for this vitally needed economic program to be implemented when federal funds become available, this act must take effect immediately.

CHAPTER 445

An act to add and repeal Article 3.6 (commencing with Section 15346) of Chapter 1 of Part 6.7 of Division 3 of Title 2 of the Government Code, relating to defense conversion, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Article 3.6 (commencing with Section 15346) is added to Chapter 1 of Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

Article 3.6. California Defense Conversion Act of 1993

15346. This article shall be known and may be cited as the California Defense Conversion Act of 1993.

15346.1. The Legislature declares as follows:

(a) For over half a century, California's industries, universities, businesses, and workers have contributed to our nation's defense, utilizing their capital, talents, and skills to develop and bring to production important new technologies and advanced weapons systems, aircraft, and missiles.

(b) The nation now confronts the challenge of converting our defense dependent economic sector to meet the rigors of commercial competition. California industries and workers have

earned their government's gratitude and deserve our assistance in this transition. Communities that have housed military facilities require assistance as those facilities close due to reductions in military spending.

(c) Defense spending in California peaked at 60 billion dollars ($60,000,000,000) in 1988. Since then, it has decreased by 16 percent with the resulting loss of 126,000 jobs. The Commission on State Finance projects a further 22 percent reduction to 37 billion dollars ($37,000,000,000) in 1997, with a loss of another 81,000 jobs. California is expected to experience the most severe impact of defense cuts in 1994.

(d) California has experienced two rounds of base closures to date and six bases were closed in round one in 1988 and 11 bases were closed in round two in 1991. An additional 10 bases are proposed for closure as part of round three in 1993.

(e) California will lose more federal payroll jobs from its 27 military base closures under rounds one to three than all of the rest of the states put together. The reduced military payroll (military and civilian employees) in California will be about 101,000 jobs. About 300,000 private sector defense industry jobs in California will be lost.

(f) California needs a coordinated defense conversion program within the state in order to transition to a lower level of defense expenditures and peacetime economic pursuits.

(g) Just as the state is a leader in the nation's defense effort, so it must now assume a leadership role in converting to a peacetime economy. That role will require a coordinated effort to ensure that California benefits from federal programs, assists local governments to plan and provide for needed services, encourages the development of new technologies and their application by California industries, provides worker retraining, and builds an infrastructure for the future.

15346.2. The Legislature recognizes that fundamental shifts occur within the economy that result in the closure of existing production facilities, retail establishments, and business institutions, or in severe reduction of employment opportunities. Reductions in the federal defense budget are creating that shift. Therefore, to promote integration in federal, state, and local government defense conversion policies and programs, to foster an active information exchange between public and private sectors, and to build on the wealth of human and industrial capital that comprises California's defense dependent economic sector, the California Defense Conversion Council is hereby created in the Trade and Commerce Agency.

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but are not limited to, the following:

(1) The Secretary of the Trade and Commerce Agency.

(2) The Secretary of the Environmental Protection Agency.

(3) The Director of the Employment Development Department.

(4) The Director of the Office of Planning and Research.

(5) The Director of the Energy Commission.

(6) The Director of Transportation.

(7) The Director of the Employment Training Panel.

(b) The Speaker of the Assembly shall have two appointees which may include, but are not limited to, members representing labor, business, or local government.

(c) The Senate Committee on Rules shall have two appointees which may include, but are not limited to, members representing labor, business, or local government.

(d) One representative annually nominated to the council from the regional technology alliances in northern California.

(e) One representative annually nominated to the council from the regional technology alliances in southern California.

(f) Nonvoting members including:

(1) The President of the University of California.

(2) The Chancellor of the California State University.

(3) The Chancellor of the California Community Colleges.

(4) The Speaker of the Assembly or his or her designee.

(5) The President pro Tempore of the Senate or his or her designee.

(6) Members of regional technology alliances not represented under subdivisions (d) and (e).

15346.4. (a) The members of the council shall elect a member to be the chairperson of the council.

(b) The Office of Strategic Technology shall provide staff support to the council.

(c) It shall be the purpose of the council to provide a central clearinghouse for all base reuse and defense conversion activities in the state.

15346.5. The council shall do all of the following:

(a) Develop and recommend to the Governor and the Legislature a strategic plan for federal, state, and local defense conversion and training programs. The plan shall address the state's role in assisting communities impacted by base closures. The opportunity shall be provided for public review and comments on the strategic plan prior to release to the Governor and the Legislature.

(b) Provide a central location for all base reuse, community assistance and training funding, regulations, and application procedures to expedite the transfer of state and federal funds to state and local projects in a timely and efficient manner, and to provide technical assistance to communities and businesses.

(c) Provide a central location for all defense conversion funding, regulations, and application procedures to expedite the transfer of funds to state and local projects in a timely and efficient manner.

(d) Serve as a central location for input and information, including needs, issues, and recommendations from businesses, industry representatives, labor, local government, and communities.

(e) Identify available state and federal resources to assist businesses (with emphasis on small and minority, women, and disabled veteran-owned businesses), workers, communities, and educational institutions affected by defense expenditure reduction.

(f) Provide one-stop coordination, maintain and disseminate information, standardize state endorsement procedures and develop fast-track review procedures for proposals seeking state funds to match federal defense conversion funding programs.

(g) Review recommendations for state funding awards by regional technology alliances.

(h) Establish criteria under which regional technology alliances may apply for designation.

(i) Where funds and resources are available, maintain and establish data bases in such fields as defense-related companies, industry organization proposers for state and federal defense industry conversion, community assistance, training, and base reuse funds, and provide electronic access to the data bases.

(j) Conduct outreach to entities and parties involved in defense conversion across the state and provide a network to facilitate assistance and coordination for all defense conversion activities within the state.

(k) The council shall help develop and coordinate state advocacy efforts on the federal level.

(l) The council shall conduct an evaluation of the impact of the state's matching fund expenditures on the California economy. This evaluation shall be transmitted to the Legislature on or before January 1, 1995, and again on January 1, 1997, and shall consider job growth, increased state and local revenues, and other factors for measuring the effectiveness of this program.

15346.6. (a) Each regional technology alliance shall perform the following activities:

(1) Raise and leverage funds from multiple public and private sources to support technology development, commercialization, and application, and industry competitiveness particularly in response to defense industry conversion and diversification.

(2) Assist in the formation of new businesses.

(3) Maintain an electronic network and access to data bases that encourages business ventures.

(4) Coordinate with activities and efforts of industry, academia, federal laboratories, and governments.

(5) Recommend to the Defense Conversion Council administrative actions or programs that could assist California's defense-dependent industries to successfully convert to commercial markets.

(6) Provide information about state and federal defense conversion programs, including, but not limited to, job training,

economic development, industrial modernization, dual-use technology, new management techniques, and technology development and transfer.

(7) Identify environmental industries.

(b) Each regional technology alliance may also perform, but not be limited to, the following activities:

(1) Assist in identifying businesses that could benefit from defense conversion programs and defense-dislocated workers who require employment and training opportunities.

(2) Assist and provide coordination in determining job opportunities within and outside of the defense industry for which displaced workers could be retrained and placed.

(3) Serve as a forum for industrywide networking linking producers, suppliers, and consumers.

(4) Assist individual businesses and industry consortia in applying for state and federal defense conversion program funds.

(5) Provide information and assistance in upgrading individual businesses and industrywide production and management processes.

(6) Provide any other information that will assist defense conversion programs and activities.

15346.7. (a) The council shall establish criteria under which regional technology alliances may apply to the council to be designated for purposes of this article if they meet the necessary qualifications.

(b) Criteria for designation of regional technology alliances shall include, but not be limited to the following:

(1) Comprehensive regional assessment of needs and impact of defense cuts on the region.

(2) Organizational responsiveness to regional assessment of needs.

(3) Active industry participation and support.

(4) Leverage of state funds.

(5) Participation, support, and coordination among academia, federal laboratories, industry, labor, the financial sector, and local government.

(6) Management capacity, including knowledge of and experience with state contracting procedures.

(7) Experience and expertise in the delivery of services and resources, programs and activities for technology development, commercialization, application, and competitiveness at the regional level particularly in response to defense industry conversion and diversification.

(8) Ability to benefit from and contribute to the integrated networking system established by the council.

(9) Representation of small businesses, including, but not limited to, minority, women, and disabled veteran-owned businesses where possible.

(c) The council shall establish criteria for funding projects.

15346.8. (a) The council shall meet at the times and in places it

deems necessary. Whenever possible, meetings shall be held in Sacramento in state facilities.

(b) Under no circumstances shall the council permit absentee or proxy voting at any of its proceedings.

(c) Council members may receive reimbursement for travel costs directly related to council attendance if funding is available.

(d) The council shall apply for grants and may seek contributions from private industry to fund its operations.

(e) The council shall actively solicit and accept funds from industry, foundations, or other sources to promote and fund research and development of dual technologies, to identify alternative applications of military technologies, to initiate market research for identifying possible defense conversion products, to establish worker and business training programs, and to operate pilot projects to evaluate and demonstrate useful approaches. These efforts should be coordinated with the regional technology alliances.

15346.9. The Trade and Commerce Agency shall adopt regulations to implement the programs authorized in this chapter. The agency shall adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1, and for purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall be repealed within 180 days after their effective date, unless the agency complies with Chapter 3.5 (commencing with Section 11340) of Part 1 as provided in subdivision (e) of Section 11346.1.

SEC. 2. This act shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1999, deletes or extends that date.

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

In order for this vitally needed economic program to be implemented when federal funds become available, this act must take effect immediately.

CHAPTER 446

An act to amend Sections 15379, 15379.45, 15379.5, 15379.6, 15379.7, 15379.8, and 15379.10 of, to add Section 15379.2 to, to repeal Section 15379.9 of, to repeal and add Sections 15333.5, 15379.3, 15379.4, and 15379.5 of, to amend the heading of Chapter 3.5 (commencing with Section 15379) of Part 6.7 of, to amend and renumber the heading of Article 1 (commencing with Section 15379) of Chapter 3.5 of Part 6.7 of, and to add Article 1 (commencing with Section 15378.98), Article 3 (commencing with Section 15379.14), and Article 4 (commencing with Section 15379.15), the Government Code, relating to competitive technology, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 15333.5 of the Government Code is repealed.

SEC. 1.5. Section 15333.5 is added to the Government Code, to read:

15333.5. (a) There is created in the agency the Office of Strategic Technology. The office shall support the development, application, and commercialization of technology to create jobs, respond to industry changes, and foster competitiveness. The office shall administer programs for technology transfer that provide cash match to leverage private and federal dollars for technology development and commercialization particularly in response to defense industry conversion and diversification.

(b) The Office of Strategic Technology shall provide technical assistance and establish grant programs including, but not limited to, the following:

(1) The Challenge Grant Program.

(2) The Technology Planning Program.

(3) The Manufacturing Technology Program.

(c) The Office of Strategic Technology shall be the lead agency for the State of California in the areas of manufacturing technology and other aspects of strategic technology.

(d) The intent of the Office of Strategic Technology is to provide statewide coordination, administration and decentralization of services and resources that foster technology development and commercialization particularly in response to defense industry conversion and diversification.

(e) The Office of Strategic Technology in the Trade and Commerce Agency shall provide management, administration and evaluation of programs that foster technology development and commercialization particularly in response to defense industry

conversion and diversification.

(f) The Office of Strategic Technology will assist in supporting the activities of the Defense Conversion Council, facilitate the process for reviewing and approving state funding awards by Regional Technology Alliances and designation of Regional Technology Alliances.

(g) The Office of Strategic Technology shall do, but is not limited to, the following:

(1) Serve as the lead office for programs that foster technology development and commercialization particularly in response to defense industry conversion and diversification.

(2) Coordinate with the education, research, and training capacities of higher education institutions.

(3) Monitor and evaluate programs and projects to ensure contract compliance and performance agreements.

(4) Identify opportunities and strategies to leverage state funds and program services and resources with public and private sources.

(5) Provide technical assistance, coordination and facilitate the activities, programs, and projects of the Regional Technology Alliances.

(6) Award grants to Regional Technology Alliances for administrative support, based upon a competitive application process administered by the Office of Strategic Technology.

(7) Provide technical assistance, coordination and facilitate the activities of the California Manufacturing Excellence Program.

(8) Coordinate the access to technology and business development information available by computer.

(9) Market and promote state programs and projects that foster technology transfer development and commercialization resulting in enhanced competitiveness and job creation.

SEC. 2. The heading of Chapter 3.5 (commencing with Section 15379) of Part 6.7 of Division 3 of Title 2 of the Government Code is amended to read:

CHAPTER 3.5. CALIFORNIA STRATEGIC TECHNOLOGY PROGRAMS

SEC. 3. Article 1 (commencing with Section 15378.98) is added to Chapter 3.5 of Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

Article 1. General Provisions

15378.98. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter.

(a) "Agency" means the Trade and Commerce Agency.

(b) "California-based foundation" means an organization defined in the Internal Revenue Code as a private foundation, incorporated in and primarily conducting its activities within this state, and receiving funding in whole or substantial part from California-based

companies.

(c) "Collaborative research" means technological or scientific research that leads to the commercialization of products, processes, or services, and is conducted or funded jointly by two or more of the following:

(1) The private sector, including intra-industry groups.

(2) The federal government.

(3) The state.

(4) Public or private universities, colleges, and laboratories.

(d) "Consortia" means jointly funded or jointly operated nonprofit independent research and development organizations. "Consortia development" means the establishment of consortia to manage and fund a variety of projects within a specific technology or industry priority.

(e) "Defense conversion" means the assessment and implementation of strategies in response to the reallocation of resources from defense-related projects to other uses.

(f) "Industry association" means a nonprofit organization with a substantial presence in California whose membership consists in whole or in part of California-based companies, and whose funding is derived in whole or in part from California-based companies.

(g) "Manufacturing technology" means the assessment and implementation of strategies designed to enhance the competitiveness and viability of specific manufacturing industries.

(h) "Nonprofit cooperative association" means an association organized and operated pursuant to either Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code, or Part 2 (commencing with Section 12200) of Division 3 of Title 1 of the Corporations Code.

(i) "Secretary" means the Secretary of the Trade and Commerce Agency.

(j) "Strategic technology" means the utilization of technology as an economic development tool.

(k) "Technology planning" means industry specific alliances to identify planning strategies and strategic alliances.

(*l*) "Technology transfer" means the movement of the results of applied technology or scientific research to the design development and production of new or improved products, services, or processes, including the utilization of results of a military or defense-related technology to the development or production of commercial applications.

15378.99. The agency shall adopt regulations to implement the programs authorized in this chapter. The agency shall adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1, and for purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of

Section 11346.1, the regulations shall be repealed within 180 days after their effective date, unless the agency complies with Chapter 3.5 (commencing with Section 11340) of Part 1 as provided in subdivision (e) of Section 11346.1.

SEC. 4. The heading of Article 1 (commencing with Section 15379) of Chapter 3.5 of Part 6.7 of Division 3 of Title 2 of the Government Code is amended and renumbered to read:

Article 2. Challenge Grant Program

SEC. 4.5. Section 15379 of the Government Code is amended to read:

15379. The Legislature finds and declares all of the following:

(a) California companies must compete in world markets against foreign manufacturers that are supported in technology development by their national governments.

(b) Companies in this state, as well as throughout the United States, are losing markets for manufactured goods, even though the United States has led the world in basic research.

(c) To retain California manufacturing and service jobs and maintain our industrial competitiveness, California must make use of its universities and national laboratories for solutions to technological problems. California has the benefit of unique federal laboratories, such as Lawrence Berkeley Laboratory, Lawrence Livermore National Laboratory, Jet Propulsion Laboratory, Ames Research Center, and Stanford Linear Accelerator Center, and world renowned universities such as the University of California, Stanford University, the California Institute of Technology, and the University of Southern California to draw upon for this purpose.

(d) The state should facilitate, promote, and enhance technology transfer programs which will make the unparalleled resources of our universities and national laboratories available to private industry, and ultimately into the marketplace.

(e) The state should support collaborative research projects, involving the state, academia, and private industry, which have been carefully screened and offer a likely return on the state's investment. The agency should identify and facilitate collaborative research projects which may solve critical industry and environmental problems.

(f) Competitive grants for technology transfer provided by the state should target emerging technologies, and industries, as described in paragraph (4) of subdivision (c) of Section 15333.6.

SEC. 5. Section 15379.2 is added to the Government Code to read:

15379.2. (a) The intent of the Regional Technology Alliances is to decentralize the delivery of services and resources, programs and activities for technology development, commercialization, application, and competitiveness at a regional level. The office shall provide the overall administration, coordination, and informational network for the Defense Industry Conversion and Diversification

Program. The initial three alliances shall be established as nonprofit corporations in the San Francisco Bay area, Los Angeles, and San Diego.

(b) Each alliance shall perform the following activities:

(1) Raise and leverage funds from multiple public and private sources to support technology development, commercialization, and application and industry competitiveness particularly in response to defense industry conversion and diversification.

(2) Assist in the formation of new businesses.

(3) Maintain an electronic network and access to data bases that encourages business ventures.

(4) Coordinate with activities and efforts of industry, academia, federal laboratories, and governments.

(5) Recommend to the Defense Conversion Council administrative actions or programs that could assist California's defense-dependent industries to successfully convert to commercial markets.

(6) Provide information about state and federal defense conversion programs, including, but not limited to, job training, economic development, industrial modernization, dual-use technology, new management techniques, and technology development and transfer.

(7) Identify emerging industries which may include commercial space applications, transportation, environment, high performance computing and communications, biotechnology and advanced materials, and processing and critical existing industries.

(c) Each alliance may also perform, but not limited to, the following activities:

(1) Assist in identifying businesses that could benefit from defense conversion programs and defense-dislocated workers who require employment and training opportunities.

(2) Assist and provide coordination in determining job opportunities within and outside of the defense industry for which displaced workers could be retrained and placed.

(3) Serve as a forum for industrywide networking linking producers, suppliers, and consumers.

(4) Assist individual businesses and industry consortia in applying for state and federal defense conversion program funds.

(5) Provide information and assistance in upgrading individual businesses and industrywide production and management processes.

(6) Provide information as identified by the council of available state and federal resources to aid businesses and workers affected by defense spending reductions, base closures, plant closures, and layoffs, to foster long-term economic vitality, industrial growth, and job opportunities.

(d) Each alliance is encouraged to develop activities which achieve the below listed results.

(1) Creation and retention of jobs.

(2) Creation of new businesses.

(3) Development of new commercial or dual-use products.

(4) Establishment of industry partnerships and consortia.

(5) Demonstration of productivity enhancement such as return on investment, reduced cost, employee training, and upgrades.

(6) Establishment of public and private partnerships.

(7) Commitment of industry support, participation, and capital.

(8) Leverage of state funds.

(9) Loan repayment ratio.

(10) Participation of small and minority women and disabled veteran owned businesses.

(11) Work force training.

(e) The agency shall be authorized to enter into a contract for services with any alliance to provide services to the office. These contracts shall be sole source, and exempt from the competitive bid process.

(f) During the first two years following selection of an alliance, the alliance shall monitor the performance of any application funded pursuant to Section 15379.3, and each invoice for payment shall be reviewed and approved by the alliance, but the contract for services shall be directly between the office and the entity receiving grant funding. Commencing with the third year of designation, any alliance with procedures and processes approved by the office shall be authorized to directly contract with grant recipients. The office shall audit these grants on a regular basis.

SEC. 6. Section 15379.3 of the Government Code is repealed.

SEC. 7. Section 15379.3 is added to the Government Code, to read:

15379.3. (a) There is within the office the Challenge Grant Program, consisting of technology transfer grants and defense industry conversion and diversification grants. Challenge grants projects funded shall include, but not be limited to, the following: defense industry conversion and diversification, access to ongoing research and research findings, exchange or transfer of personnel and research support services, including capital outlay, consortia development, and collaborative research.

(b) All funds appropriated or received by the Challenge Grant Program shall administratively be divided into either the Technology Transfer Grant Program or the Defense Industry Conversion and Diversification Program. Funding awards for the Technology Transfer Grant Program shall be made pursuant to the requirements set forth in Sections 15379.4 and 15379.6.

(c) The agency shall award grants based upon a competitive application process addressing the project's eligibility and ability to fulfill the goals of the program.

(d) The agency shall report on this program in its annual report as required by subdivision (e) of Section 15323.

SEC. 8. Section 15379.4 of the Government Code is repealed.

SEC. 9. Section 15379.4 is added to the Government Code, to read:

15379.4. (a) An eligible technology transfer or defense industry conversion and diversification project shall, at least, do all of the following:

(1) Identify the sources or funding for the entire project.

(2) Not supplant other funding.

(3) Demonstrate that a significant portion of the project will be undertaken in California.

(b) In addition to the requirements contained in subdivision (a), a defense industry conversion and diversification project shall not receive more than 25 percent of the total project costs requested in the proposal.

(c) In addition to the requirements contained in subdivision (a), a technology transfer project shall:

(1) Represent a technology or industry, or both, targeted in the application.

(2) Include a significant amount of matching contributions from either of the following:

(A) A private sector company or companies.

(B) A California-based foundation or foundations, an industry association or associations, or a nonprofit cooperative association or associations.

(3) Include either of the following:

(A) A private sector company or companies that have significant operations in the state.

(B) A California-based foundation or foundations, an industry association or associations, or a nonprofit cooperative association or associations.

SEC. 10. Section 15379.45 of the Government Code is amended to read:

15379.45. The technology transfer grantee shall not incur expenses to be paid with grant funds without evidence of a workable agreement between the parties participating in the project that at least includes both of the following:

(a) A resolution of the intellectual property rights relative to the project.

(b) A direct and ongoing involvement of the public and private sectors, when applicable in the project.

SEC. 11. Section 15379.5 of the Government Code is repealed.

SEC. 12. Section 15379.5 is added to the Government Code, to read:

15379.5. (a) In awarding technology transfer grants, the agency shall consider the following:

(1) The likelihood of commercialization of a product, service, or process.

(2) The potential impact on the state's economy.

(3) The cost-effectiveness of the project.

(4) The importance of state funding for the viability of the project.

(5) Cost sharing by other participants.

(6) The involvement of small businesses and minority-, disabled veteran-, and women-owned businesses.

(7) Projects that will result in a prototype by the end of the grant period.

(8) Other criteria that the agency determines are consistent with the purposes of the program.

(b) The agency shall target industries and technologies with a potential for enhancing the California economy, and shall fund projects within those industries and utilizing those technologies.

SEC. 13. Section 15379.6 of the Government Code is amended to read:

15379.6. Technology transfer projects may include reasonable overhead costs incurred by a research institute and related to the project which shall not exceed the allowable federal overhead costs for research. All other projects may include any costs authorized by the principal funding agency, and not precluded by state requirements.

SEC. 14. Section 15379.7 of the Government Code is amended to read:

15379.7. Except for defense industry conversion and diversification projects, only a public agency or a not-for-profit or nonprofit organization shall receive funds under this chapter. Any person or entity is authorized to receive a defense industry conversion and diversification grant.

SEC. 15. Section 15379.8 of the Government Code is amended to read:

15379.8. The agency may obtain scientific and technological expertise as needed to provide advice and input on the program, the establishment of targeted technologies and industries, the review of grant applications, and the review of project performance.

SEC. 16. Section 15379.9 of the Government Code is repealed.

SEC. 17. Section 15379.10 of the Government Code is amended to read:

15379.10. (a) Notwithstanding Sections 15379.3, 15379.4, 15379.45, and 15379.5, and the regulations implementing this chapter, the secretary may award discretionary technology transfer grants totaling not more than 5 percent or one hundred thousand dollars ($100,000), whichever is greater, of the funds appropriated each year for this program.

(b) Notwithstanding Sections 15379.3, 15379.4, 15379.45, 15379.5, and subdivision (a) of this section, the secretary may award up to 15 percent of the funds appropriated for a given fiscal year for consortia development projects which do not have private sector match but will have private sector match within six months from the date of the award of funding. For purposes of this subdivision, "private sector match" means a cash or in-kind contribution available for expenditure or use to a consortium development project. If, after six months, no private sector match is available, funding under the program shall cease and all moneys previously received shall be

returned to the state.

SEC. 18. Article 3 (commencing with Section 15379.14) is added to Chapter 3.5 of Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

Article 3. Technology Planning Program

15379.14. There is hereby established within the agency the Technology Planning Program. The program shall provide grants and technical assistance to California nonprofit organizations and public entities working within specific industries to identify conversion or expansion projects. Grants may be awarded in the areas of strategic planning and strategic alliances. The program shall award grants based upon a competitive application process addressing the project's eligibility, a review of the proposal's scientific and technological aspects, and ability to fulfill goals of the program. Priority shall be given to those projects with the identified support of industry representatives, matching funding, projects likely to receive federal funds requiring matching funds, and any other criteria determined by the agency. A project example is a joint effort to develop and commercialize defense-related technologies by federal laboratories, universities, and companies in close geographical proximity.

All or a portion of the technology planning program can be administered by the corporations established pursuant to subdivision (d) of Section 15333.6.

SEC. 19. Article 4 (commencing with Section 15379.15) is added to Chapter 3.5 of Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

Article 4. Manufacturing Technology Program

15379.15. There is hereby established within the agency the Manufacturing Technology Program. The program shall provide matching grants and technical assistance to California nonprofit organizations and public agencies to perform one or more of the following functions:

(a) Establish and fund a California manufacturers excellence program.

(b) Develop and disseminate an inventory of resources available to assist manufacturers.

(c) Implement a strategy for addressing needs identified in the statewide California Manufacturing Excellence Program Plan, given available resources.

(d) Projects resulting in consortia partnership or alliances for manufacturing technology.

15379.16. The program shall award grants based upon a competitive application process addressing the project's eligibility, a review of the proposal's scientific and technological aspects, and

ability to fulfill the goals of the program. Priority in awarding grants shall be given to those projects that will use the grant funds as matching funds for a federal grant, projects with additional sources of funding, projects involving geographic areas or manufacturing segments targeted by the agency, and projects satisfying any other criteria developed by the agency. An example of a project is a joint effort by federal laboratories, universities, and private companies to research and develop advanced manufacturing technologies that would significantly reduce the health, safety, and environmental hazards of an existing manufacturing process.

SEC. 20. This act shall become operative only if Assembly Bill 648, Assembly Bill 2222, and Senate Bill 458 of the 1993–94 Regular Session are all enacted on or before January 1, 1994.

SEC. 21. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for state government to respond to severe economic problems, this act must take effect immediately.

CHAPTER 447

An act to amend Section 19857 of the Government Code, relating to state officers.

[Approved by Governor September 23, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 19857 of the Government Code is amended to read:

19857. (a) The appointing power of any officer or employee not a member of the civil service may promulgate regulations governing vacations for these officers or employees. In the absence of these regulations, the rules of the department relating to the regulation and methods of accumulation of vacation for civil service employees shall govern.

(b) Notwithstanding subdivision (a), no paid leave including, but not limited to, vacation, annual leave, and sick leave shall be accrued by state officers in the following positions:

(1) Executive Director of the California Housing Finance Agency.
(2) Director of the Office of Administrative Law.
(3) Director of Emergency Medical Services Authority.
(4) Director of the Stephen P. Teale Data Center.
(5) Executive Director of the Office of Criminal Justice Planning.
(6) Director of the California Conservation Corps.
(7) Director of the Arts Council.

The department may adopt regulations for the application of this provision to similar positions established in the future.

CHAPTER 448

An act to amend Section 798.30 of the Civil Code, relating to mobilehome parks.

[Approved by Governor September 24, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 798.30 of the Civil Code is amended to read:

798.30. The management shall give a homeowner written notice of any increase in his or her rent at least 90 days before the date of the increase.

CHAPTER 449

An act to amend Section 84755 of the Education Code, relating to postsecondary education.

[Approved by Governor September 24, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 84755 of the Education Code is amended to read:

84755. (a) The Legislature finds and declares that program-based funding, once implemented, will more adequately and accountably fund the costs of providing quality community college education. Given that program-based funding will not be implemented until fiscal year 1991–92, given that community colleges will be entering a period of major reform and incurrence of new state mandates commencing in January 1989, and given that community colleges will be entering this period of reform having lost purchasing power since the 1977–78 fiscal year, the Legislature recognizes the need to create a transitional funding mechanism for program improvement and mandate funding that can operate until program-based funding is implemented.

(b) For the purpose of improving the quality of community college educational programs and services, for the purpose of reimbursing state-mandated local program costs imposed by this act, and for the purposes of initially implementing specified reforms, the board of governors shall, from amounts appropriated for purposes of

this section, allocate program improvement revenues to each district on the basis of an amount per unit of average daily attendance funded in the prior fiscal year. However, this amount shall be increased or decreased to provide for equalization in a manner determined by the Board of Governors, consistent with Sections 84703 to 84705, inclusive.

Each community college district shall use its allocation to initially reimburse state-mandated local program costs, and then to implement specified reforms and make authorized program and service improvements as follows:

(1) Developing articulated programs provided for in Section 69 of Chapter 973 of the Statutes of 1988 with school districts and campuses of the University of California and California State University.

(2) Applying minimum qualifications to all newly hired faculty and administrators, including candidates for these positions as required by Section 87356.

(3) Developing and administering a process for waiver of minimum qualifications as required by Section 87359.

(4) Establishing and applying local hiring criteria as required by Section 87360.

(5) Establishing and applying faculty service areas and competency criteria as required by Sections 87743 to 87743.5, inclusive.

(6) Evaluating temporary employees, instituting peer review evaluation, and widely distributing evaluation procedures as required by Section 87663.

(7) Establishing and applying new processes for tenure evaluation required by Section 87610.1.

(8) Establishing and applying the tenure denial grievance procedure required by Section 87610.1.

(9) Establishing and applying a process for moving administrators into faculty positions as required by Sections 87454 to 87458, inclusive.

(10) Publishing and distributing a report on the affirmative action success rate as required by Section 87102.

(11) Improving instruction by reducing the ratio of full-time equivalent students to full-time equivalent instructors.

(12) Improving instruction by increasing the hiring of full-time instructors and limiting the practice of hiring part-time instructors.

(13) Augmenting budgets for college libraries and learning resources.

(14) Augmenting budgets for plant maintenance and operations.

(15) Adding new courses or programs to serve community need.

(16) Making progress towards affirmative action goals and timetables established by the district.

(17) Developing and maintaining programs and services authorized by Section 78212.5.

(18) Augmenting budgets for student services in the areas of greatest need.

(19) Providing for release time for faculty and staff as deemed

appropriate by the governing board of each community college district, to enable faculty and staff participation in implementing reforms.

(20) Developing and administering a program that provides for reassignment of up to 20 percent of the time of individual tenured faculty member's teaching assignments, as determined by the governing board of each community college district, to counsel and assist newly hired faculty acquire teaching and classroom management skills. A governing board shall approve reassignment time for no more than 5 percent of the district's full-time equivalent tenured faculty in any one fiscal year.

(c) Except as provided by Section 87482.6, and except as necessary to reimburse the costs of new state mandates, district governing boards shall have full authority to expend program improvement allocations for any or all of the authorized purposes specified in subdivision (b).

(d) As required by the board of governors, the governing board of each community college district shall submit to the board of governors a plan for using the resources allocated pursuant to this section. The board of governors shall review each plan to ensure that proposed expenditures are consistent with the listing of authorized expenditures provided in this section, and the board of governors shall approve all plans to the full extent that expenditures are authorized by this section. To the extent that a community college district expends its program improvement allocation consistent with its plan, the board of governors shall include the district's allocation as part of the district's base budget for subsequent years.

(e) The board of governors, through the annual systemwide budget submitted pursuant to paragraph (5) of subdivision (b) of Section 70901, shall request necessary resources for the purposes of this section. It is the intent of the Legislature that the appropriation and allocation of program improvement money not otherwise provided pursuant to subdivision (b) shall be accomplished through the annual state budget process beginning with the 1989–90 fiscal year. After June 30, 1991, if Section 84750 is implemented, it is the intent of the Legislature to fund the ongoing operations of community college districts pursuant to Section 84750.

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

CHAPTER 450

An act to amend Section 8800 of, and to add Section 8812 to, the Family Code, relating to adoption.

[Approved by Governor September 24, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 8800 of the Family Code is amended to read:

8800. (a) The Legislature finds and declares that an attorney's ability to effectively represent his or her client may be seriously impaired when conflict of interest deprives the client of the attorney's undivided loyalty and effort. The Legislature further finds and declares that the relation between attorney and client is a fiduciary relation of the very highest character, and binds the attorney to the most conscientious fidelity.

(b) The Legislature finds that Rule 2-111 (A) (2) of the State Bar Rules of Professional Conduct provides that an attorney shall not withdraw from employment until the attorney has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(c) The Legislature declares that in an independent adoption proceeding, whether or not written consent is obtained, multiple representation by an attorney should be avoided whenever a birth parent displays the slightest reason for the attorney to believe any controversy might arise. The Legislature finds and declares that it is the duty of the attorney when a conflict of interest occurs to withdraw promptly from any case, advise the parties to retain independent counsel, refrain from taking positions in opposition to any of these former clients, and thereafter maintain an impartial, fair, and open attitude toward the new attorneys.

(d) Notwithstanding any other law, it is unethical for an attorney to undertake the representation of both the prospective adoptive parents and the birth parents of a child in any negotiations or proceedings in connection with an adoption unless a written consent is obtained from both parties. The written consent shall include all of the following:

(1) A notice to the birth parents, in the form specified in this section, of their right to have an independent attorney advise and represent them in the adoption proceeding and that the prospective adoptive parents may be required to pay the reasonable attorney's fees up to a maximum of five hundred dollars ($500) for that representation, unless a higher fee is agreed to by the parties.

(2) A notice to the birth parents that they may waive their right

to an independent attorney and may be represented by the attorney representing the prospective adoptive parents.

(3) A waiver by the birth parents of representation by an independent attorney.

(4) An agreement that the attorney representing the prospective adoptive parents shall represent the birth parents.

(e) Upon the petition or motion of any party, or upon motion of the court, the court may appoint an attorney to represent a child's birth parent or parents in negotiations or proceedings in connection with the child's adoption.

(f) The birth parent or parents may have an attorney, other than the attorney representing the interests of the prospective adoptive parents, to advise them fully of the adoption procedures and of their legal rights. The birth parent or parents also may retain an attorney to represent them in negotiations or proceedings in connection with the child's adoption. The court may award attorney's fees and costs for just cause and based upon the ability of the parties to pay those fees and costs.

(g) In the initial communication between the attorney retained by or representing the prospective adoptive parents and the birth parents, or as soon thereafter as reasonable, but before any written consent for dual representation, the attorney shall advise the birth parents of their rights regarding an independent attorney and that it is possible to waive the independent attorney.

(h) The attorney retained by or representing the prospective adoptive parents shall inform the prospective adoptive parents in writing that the birth parent or parents can change their minds and that any moneys expended in negotiations or proceedings in connection with the child's adoption are not reimbursable. The prospective adoptive parents shall sign a statement to indicate their understanding of this information.

(i) Any written consent to dual representation shall be filed with the court before the filing of the birth parent's consent to adoption.

SEC. 2. Section 8800 of the Family Code is amended to read:

8800. (a) The Legislature finds and declares that an attorney's ability to effectively represent his or her client may be seriously impaired when conflict of interest deprives the client of the attorney's undivided loyalty and effort. The Legislature further finds and declares that the relation between attorney and client is a fiduciary relation of the very highest character, and binds the attorney to the most conscientious fidelity.

(b) The Legislature finds that Rule 2-111 (A) (2) of the State Bar Rules of Professional Conduct provides that an attorney shall not withdraw from employment until the attorney has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(c) The Legislature declares that in an independent adoption proceeding, whether or not written consent is obtained, multiple representation by an attorney should be avoided whenever a birth parent displays the slightest reason for the attorney to believe any controversy might arise. The Legislature finds and declares that it is the duty of the attorney when a conflict of interest occurs to withdraw promptly from any case, advise the parties to retain independent counsel, refrain from taking positions in opposition to any of these former clients, and thereafter maintain an impartial, fair, and open attitude toward the new attorneys.

(d) Notwithstanding any other law, it is unethical for an attorney to undertake the representation of both the prospective adoptive parents and the birth parents of a child in any negotiations or proceedings in connection with an adoption unless a written consent is obtained from both parties. The written consent shall include all of the following:

(1) A notice to the birth parents, in the form specified in this section, of their right to have an independent attorney advise and represent them in the adoption proceeding and that the prospective adoptive parents may be required to pay the reasonable attorney's fees up to a maximum of five hundred dollars ($500) for that representation, unless a higher fee is agreed to by the parties.

(2) A notice to the birth parents that they may waive their right to an independent attorney and may be represented by the attorney representing the prospective adoptive parents.

(3) A waiver by the birth parents of representation by an independent attorney.

(4) An agreement that the attorney representing the prospective adoptive parents shall represent the birth parents.

(e) Upon the petition or motion of any party, or upon motion of the court, the court may appoint an attorney to represent a child's birth parent or parents in negotiations or proceedings in connection with the child's adoption.

(f) The birth parent or parents may have an attorney, other than the attorney representing the interests of the prospective adoptive parents, to advise them fully of the adoption procedures and of their legal rights. The birth parent or parents also may retain an attorney to represent them in negotiations or proceedings in connection with the child's adoption. The court may award attorney's fees and costs for just cause and based upon the ability of the parties to pay those fees and costs.

(g) In the initial communication between the attorney retained by or representing the prospective adoptive parents and the birth parents, or as soon thereafter as reasonable, but before any written consent for dual representation, the attorney shall advise the birth parents of their rights regarding an independent attorney and that it is possible to waive the independent attorney.

(h) The attorney retained by or representing the prospective adoptive parents shall inform the prospective adoptive parents in

writing that the birth parent or parents can revoke consent to the adoption pursuant to Section 8814.5 and that any moneys expended in negotiations or proceedings in connection with the child's adoption are not reimbursable. The prospective adoptive parents shall sign a statement to indicate their understanding of this information.

(i) Any written consent to dual representation shall be filed with the court before the filing of the birth parent's consent to adoption.

SEC. 3. Section 8812 is added to the Family Code, to read:

8812. Any request by a birth parent or birth parents for payment by the prospective adoptive parents of attorney's fees, medical fees and expenses, counseling fees, or living expenses of the birth mother shall be in writing. The birth parent or parents shall, by first-class mail or other agreed upon means to ensure receipt, provide the prospective adoptive parents written receipts for any money provided to the birth parent or birth parents. The prospective adoptive parents shall provide the receipts to the court when the accounting report required pursuant to Section 8610 is filed.

SEC. 4. Section 2 of this act shall only become operative if Senate Bill 792 of the 1993 portion of the 1993–94 Regular Session is enacted, in which case Section 2 shall be operative on the date that Senate Bill 792 is operative and Section 1 of this act shall only be operative until Senate Bill 792 becomes operative.

CHAPTER 451

An act to amend Section 361.3 of the Welfare and Institutions Code, relating to children.

[Approved by Governor September 24, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 361.3 of the Welfare and Institutions Code is amended to read:

361.3. (a) In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative. In determining whether placement with a relative is appropriate, the probation officer and court shall consider the ability of the relative to provide a secure and stable environment for the child. Factors to be considered in that assessment include, but are not limited to, the good moral character of the relative; the ability of the relative to exercise proper and effective care and control of the child; the ability of the relative to provide a home and the necessities of life for the child; which relative is most likely to protect the child from his or her

parents; which relative is most likely to facilitate visitation with the child's other relatives and to facilitate reunification efforts with the parents; and the best interests of the child. In this regard, the Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of children, and a probation officer's determination as to the ability of a disabled relative to exercise care and control should center upon whether the relative's disability prevents him or her from exercising care and control. The county social worker shall ask the parents if there are any relatives that should be considered for placement. This inquiry shall not be construed, however, to guarantee that the minor will be placed with any person so identified.

(b) If the court does not place the child with a relative who has been considered for placement pursuant to this section, the court shall state for the record the reasons placement with that relative was denied.

(c) In any case in which more than one appropriate relative requests preferential consideration pursuant to this section, the probation officer and the court, in determining which relative should receive preferential consideration, shall consider the best interests of the child, and which of the relatives is most likely to protect the child from his or her parents, to facilitate visitation with the child's other relatives, and to facilitate reunification efforts with the parents. Consideration shall also be given to attempting to place siblings and stepsiblings in the same home if such a placement is found to be in their best interests.

(d) For purposes of this section:

(1) "Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.

(2) "Relative" means an adult who is a grandparent, aunt, uncle, or sibling.

SEC. 2. Section 361.3 of the Welfare and Institutions Code is amended to read:

361.3. (a) In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative. In determining whether placement with a relative is appropriate, the county social worker and court shall consider , but shall not be limited to, consideration of the following factors:

(1) The best interests of the child, including special physical, psychological, or emotional needs.

(2) The wishes of the parent.

(3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement.

(4) Placement of siblings and half-siblings in the same home, if such a placement is found to be in the best interest of each of the children.

(5) The good moral character of the relative.
(6) The ability of the relative to do the following:
(A) Provide a secure and stable environment for the child.
(B) Exercise proper and effective care and control of the child.
(C) Provide a home and the necessities of life for the child.
(D) Protect the child from his or her parents.
(E) Facilitate court-ordered reunification efforts with the parents.
(F) Facilitate visitation with the child's other relatives.

In this regard, the Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of children, and a county social worker's determination as to the ability of a disabled relative to exercise care and control should center upon whether the relative's disability prevents him or her from exercising care and control. The county social worker shall ask the parents if there are any relatives that should be considered for placement. This inquiry shall not be construed, however, to guarantee that the minor will be placed with any person so identified. The county social worker shall further investigate the existence of other relatives for possible placement and document these efforts in the social study prepared pursuant to Section 358.1. However, this investigation shall not be construed as good cause for continuance of the dispositional hearing conducted pursuant to Section 358.

(b) In any case in which more than one appropriate relative requests preferential consideration pursuant to this section, each relative shall be considered under the factors enumerated in subdivision (a).

(c) For purposes of this section:

(1) "Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.

(2) "Relative" means an adult who is a grandparent, aunt, uncle, or sibling.

(d) Subsequent to the hearing conducted pursuant to Section 358, whenever a new placement of the minor must be made, consideration for placement shall again be given as described in this section to relatives who have not been found to be unsuitable and who will fulfill the minor's reunification or permanent plan requirements. In addition to the factors described in subdivision (a), the county social worker shall consider whether the relative has established and maintained a relationship with the minor.

(e) If the court does not place the child with a relative who has been considered for placement pursuant to this section, the court shall state for the record the reasons placement with that relative was denied.

SEC. 3. Section 2 of this bill incorporates amendments to Section 361.3 of the Welfare and Institutions Code proposed by both this bill and SB 426. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each

bill amends Section 361.3 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 426, in which case Section 1 of this bill shall not become operative.

CHAPTER 452

An act relating to school construction.

[Approved by Governor September 24, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Pursuant to an agreement previously entered into that is deemed by this act to satisfy Section 17705.7 of the Education Code, the San Juan Unified School District may retain developer fees, charges, dedications, or other requirements collected or received pursuant to Section 53080 of, or Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of, the Government Code, as a result of the development and construction of the Gold River development project, for the purpose of constructing the Gold River Elementary School, and the amount or value of those fees, charges, dedications, or other requirements shall not be applied in any computation of the district's local matching share requirement under Section 17705.5 of the Education Code.

SEC. 2. The Legislature finds and declares that, due to unique circumstances regarding the San Juan Unified School District, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 453

An act to add and repeal Section 743.1 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 24, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 743.1 is added to the Public Utilities Code, to read:

743.1. (a) Electrical corporations shall make available to qualifying heavy industrial customers optional interruptible or curtailable service. The effective rate for interruptible or curtailable service to qualifying customers shall reflect a pricing incentive for electing to operate under the interruptible or curtailable service

option. In no event shall the level of the pricing incentive for interruptible or curtailable service be altered from those levels in effect on January 30, 1993.

(b) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

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

CHAPTER 454

An act to amend Sections 67006, 67133, 75006, 75007, 75030, 75031, 75036, 75051, 75058, 75060, 75070, 75089, 75091, 75094, 75131.3, 75132, 75133, 75134, 75135, 75136, 75151, 75172, 75173, and 75176 of, and to add Sections 75037 and 75058.5 to, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 24, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 67006 of the Food and Agricultural Code is amended to read:

67006. No action taken by the commission, or by any person in accordance with this chapter or with rules or regulations adopted under this chapter, is a violation of the so-called Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of that Part 2), or any statutory or common law against monopolies or combinations in restraint of trade.

SEC. 2. Section 67133 of the Food and Agricultural Code is amended to read:

67133. After the effective date of suspension of the operation of this chapter and of the commission, the operations of the commission shall be wound up, and any asset of the commission shall be liquidated and the proceeds, along with any and all moneys remaining held by the commission, collected by assessment and not required to defray the expenses of winding up and terminating

operations of the commission, shall be returned upon a pro rata basis to all persons from whom assessments were collected in the immediately preceding current marketing season. However, if the commission finds that the amounts so returnable are so small as to make impractical the computation and remitting of a pro rata refund to those persons, any moneys remaining and any moneys remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid to any existing state or federally authorized avocado program. If no such program exists, the moneys shall be paid into the State Treasury as unclaimed trust moneys.

SEC. 3. Section 75006 of the Food and Agricultural Code is amended to read:

75006. No action taken by the commission, or by any individual in accordance with this chapter or with the rules and regulations adopted under this chapter, is a violation of the so-called Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of that Part 2), or any statutory or common law against monopolies or combinations in restraint of trade.

SEC. 4. Section 75007 of the Food and Agricultural Code is amended to read:

75007. The benefits conferred by the activities authorized pursuant to this chapter extend to those segments of the egg industry doing business within this state. Insofar as out-of-state handlers and out-of-state distributors benefit from the programs and activities authorized in accordance with this chapter, they may be obligated to bear their fair share of the burden and shall comply with this chapter.

SEC. 5. Section 75030 of the Food and Agricultural Code is amended to read:

75030. (a) "Handler" means the first person in California who either (1) sorts, grades, candles, or packages shell eggs, or (2) processes shell eggs into egg products; and who engages in the operation of selling or marketing eggs or egg products that he or she has produced, purchased, or acquired from a producer, or that he or she is marketing on behalf of a producer, whether as owner, agent, employee, or broker or otherwise. When the handler is a corporation, all of the directors and officers of the corporation in their capacity as individuals shall be included, and any liability for failure to collect or make payment of assessments of which a corporate handler may be subject pursuant to this chapter shall include identical liability upon each individual director or officer of the corporation. However, "handler" does not include a retailer, except a retailer who purchases or acquires from, or handles on behalf of, any producer, eggs or egg products that were not previously subject to assessment by the commission.

(b) Reference to "handler" in this chapter, except for Article 3

(commencing with Section 75051), Article 5 (commencing with Section 75111), subdivision (a) of Section 75132, and Article 8 (commencing with Section 75171), but not including Sections 75175 and 75176, includes California handlers and out-of-state handlers, unless otherwise specified.

SEC. 6. Section 75031 of the Food and Agricultural Code is amended to read:

75031. "Market" or "marketing" means to sell or otherwise cause to be distributed eggs or egg products into commercial channels of trade resulting in the sale of eggs or egg products in California.

SEC. 7. Section 75036 of the Food and Agricultural Code is amended to read:

75036. "Secondary handler" means any person who purchases from a handler, eggs or egg products that were previously subject to assessment under this chapter.

SEC. 8. Section 75037 is added to the Food and Agricultural Code, to read:

75037. (a) "Distributor" means any person who engages in the operation of marketing eggs or egg products that have not previously been subject to assessment under this chapter, and that he or she has purchased or acquired from another person, whether as owner, agent, employee, or broker or otherwise. When the distributor is a corporation, all of the directors and officers of the corporation in their capacity as individuals shall be included, and any liability for failure to collect or make payment of assessments of which a corporate distributor may be subject pursuant to this chapter shall include identical liability upon each individual director or officer of the corporation. However, "distributor" does not include a retailer, except a retailer who purchases or acquires from, or markets on behalf of, any producer, eggs or egg products that were not previously subject to assessment by the commission.

(b) Reference to "distributor" in this chapter, except for Article 3 (commencing with Section 75051), Article 5 (commencing with Section 75111), subdivision (a) of Section 75132, and Article 8 (commencing with Section 75171), but not including Section 75175 and 75176, includes California distributors and out-of-state distributors, unless otherwise specified.

SEC. 9. Section 75051 of the Food and Agricultural Code is amended to read:

75051. There is in the state government the California Egg Commission. The commission shall be composed of seven handler members, of which four shall be elected by and from handlers from District 1, and three shall be elected by and from handlers from District 2, one distributor, and one public member.

SEC. 9.4. Section 75058 of the Food and Agricultural Code is amended to read:

75058. (a) Two alternate handler members, one from each district, shall be elected in the same manner as the handler members.

(b) Under procedures established by the commission, any

alternate handler member may serve in place of any absent handler member on the commission regardless of whether the alternate handler was chosen from the district the absent handler member represents and shall have all the rights, privileges, and powers of the handler member when serving on the commission.

(c) In the event of death, removal, resignation, or disqualification of a handler member, the alternate handler shall act as a handler member on the commission until a qualified successor is elected.

SEC. 9.5. Section 75058.5 is added to the Food and Agricultural Code, to read:

75058.5. (a) One alternate distributor member shall be elected in the same manner as the distributor member.

(b) Under procedures established by the commission, the alternate distributor member may serve in place of the absent distributor member on the commission and shall have all the rights, privileges, and powers of the distributor member when serving on the commission.

(c) In the event of death, removal, resignation, or disqualification of the distributor member, the alternate distributor shall act as a distributor member on the commission until a qualified successor is elected.

SEC. 10. Section 75060 of the Food and Agricultural Code is amended to read:

75060. (a) Any handler member or his or her alternate shall be an individual, partner, or employee of a handler who has a financial interest in handling eggs or egg products for market. Not more than two handler members on the commission and not more than one handler member in any district shall be employed by or represent the same corporation, firm, partnership, association, or business organization.

(b) Any distributor member or his or her alternate shall be an individual who has a financial interest in marketing eggs or egg products in California and who is not also a handler. The distributor member or his or her alternate shall not have any financial interest in a handler.

(c) Handler and distributor members and alternates shall meet the requirements of this section during their entire term of office.

SEC. 11. Section 75070 of the Food and Agricultural Code is amended to read:

75070. (a) The state shall not be liable for the acts of the commission or its contracts. Payments of all claims arising by reason of the administration of this chapter or acts of the commission are limited to the funds collected by the commission.

(b) No member of the commission or alternate member, or any employee or agent thereof, is personally liable on the contracts of the commission or responsible individually in any way to any producer, any handler, any distributor, or any other person for error in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, or employee, except for his or her own individual

acts of dishonesty or crime.

(c) The commission shall accept full responsibility to defend any member of the commission or alternate member, or any employee or agent thereof, against any such claim, except for individual acts of dishonesty or crime.

(d) No commissioner or alternate member shall be held responsible individually for any act or omission of any other member of the commission. The liability of the commissioners are several and not joint, and no commissioner is liable for the default of any other commissioner.

SEC. 12. Section 75089 of the Food and Agricultural Code is amended to read:

75089. (a) The commission shall keep accurate books, records, and accounts of all of its dealings, which books, records, and accounts are subject to an annual audit by an auditing firm selected by the commission with the concurrence of the director. The audit shall be made a part of an annual report to all handlers, distributors, and producers, copies of which shall also be submitted to the Legislature and the department.

(b) In addition, the director may, as he or she determines it to be necessary, conduct or cause to be conducted a fiscal and compliance audit of the commission.

SEC. 13. Section 75091 of the Food and Agricultural Code is amended to read:

75091. The commission shall educate and instruct the wholesale and retail trade with respect to proper methods of handling and marketing eggs and egg products, to make market surveys and analyses, and to present facts to, and negotiate with, private and public agencies on matters that affect the marketing of eggs and egg products.

SEC. 14. Section 75094 of the Food and Agricultural Code is amended to read:

75094. The commission may publish and distribute, without charge, bulletins or other communications for dissemination of information relating to commission activities and other related matters to producers, handlers, and distributors.

SEC. 15. Section 75131.3 of the Food and Agricultural Code is amended to read:

75131.3. The assessment established pursuant to Section 75131 may be collected from out-of-state handlers and out-of-state distributors in accordance with procedures established by the commission on eggs or egg products marketed in this state.

SEC. 16. Section 75132 of the Food and Agricultural Code is amended to read:

75132. (a) This chapter does not apply to any handler who handles, or distributor who markets, not more than 26,000 cases of eggs per year, or the equivalent thereof, and to secondary handlers. Unless the commission determines otherwise, direct sales to customers on the premises of the handler or distributor in less than

one case lots shall not be included in computing the number of cases handled or marketed per year and shall not be subject to assessment by the commission. However, the handler or distributor shall file an affidavit with the commission stating the basis for exemption from this chapter. The commission shall then determine whether the exemption should be approved.

(b) This chapter does not apply to any out-of-state handler who handles, or out-of-state distributor who markets, not more than 26,000 cases of eggs per year, or the equivalent thereof. However, the out-of-state handler or out-or-state distributor shall file an affidavit with the commission stating the basis for exemption from this chapter. The commission shall then determine whether the exemption should be approved.

SEC. 17. Section 75133 of the Food and Agricultural Code is amended to read:

75133. Every handler and distributor, and any person required to be registered pursuant to Section 75135.5, shall keep a complete and accurate record of all eggs and egg products handled or marketed by him or her. These records shall be in the form and contain the information prescribed by the commission. The records shall be retained for a period of five years and shall be submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

SEC. 18. Section 75134 of the Food and Agricultural Code is amended to read:

75134. (a) All proprietary information obtained by the commission or the director from handlers or distributors is confidential and shall not be disclosed except when required by court order in a judicial proceeding involving this chapter.

(b) Information on volume shipments, product value, and any other related information that is required for reports to governmental agencies; financial reports to the commission or aggregate sales and inventory information; and any other information that the commission requires that gives only totals, but excludes individual handler and distributor information, may be disclosed by the commission.

SEC. 19. Section 75135 of the Food and Agricultural Code is amended to read:

75135. Assessments shall be levied upon the handler or distributor. The handler or distributor of eggs and egg products being assessed shall be a trustee of the assessment funds until they are paid to the commission at the time and in the manner prescribed by the commission.

SEC. 20. Section 75136 of the Food and Agricultural Code is amended to read:

75136. Every handler and distributor is personally liable for the payment of the assessments. Any handler or distributor who fails to file records as prescribed by the commission or pay any assessment within the time required by the commission, shall pay to the

commission a penalty of 10 percent of the amount of the assessment determined to be due and, in addition, 2 percent interest per month on the unpaid balance.

SEC. 21. Section 75151 of the Food and Agricultural Code is amended to read:

75151. It is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding five hundred dollars ($500), or by both the fine and imprisonment, for any person to do any of the following:

(a) Willfully render or furnish a false report, statement, or record required by the commission.

(b) When engaged in the handling or marketing of eggs or egg products or in the wholesale or retail trade of the handling or marketing of eggs or egg products, fail or refuse to furnish to the commission or its duly authorized agents, upon request, information concerning the name and address of the persons from whom eggs or egg products have been received and the quantity so received.

(c) Secrete, destroy, or alter records required to be kept under this chapter.

SEC. 22. Section 75172 of the Food and Agricultural Code is amended to read:

75172. (a) Following a favorable referendum conducted prior to December 31, 1989, a referendum shall be conducted by the commission every fifth year thereafter between January 1st and December 31st, following procedures provided in this article, unless a referendum is conducted as the result of a petition filed pursuant to Section 75173. In that case, the referendum shall be every fifth year following the industry-petitioned referendum.

(b) A favorable vote under this section shall be found if the director determines from the referendum that a majority of the handlers and distributors eligible to vote in the referendum voted in favor of continuing the operations of this chapter, or that the handlers and distributors so voting marketed a majority or more of the volume of eggs or egg products marketed in the preceeding season by all of the handlers and distributors who voted in the referendum.

(c) If the director finds that a favorable vote has been given, he or she shall so certify and this chapter shall remain operative. If the director finds that a favorable vote has not been given, he or she shall so certify and declare the operation of this chapter and the commission suspended upon the expiration of the then current marketing season. Thereupon, the operations of the commission shall be concluded and funds distributed in the manner provided in Section 75175.

(d) No bond or security is required for a referendum conducted pursuant to this section.

SEC. 23. Section 75173 of the Food and Agricultural Code is amended to read:

75173. (a) Upon a finding by a two-thirds vote of the commission

that the operation of this chapter has not tended to effectuate its declared purposes, the commission may recommend to the director that the operation of this chapter be suspended. However, the suspension shall not become effective until the expiration of the current marketing season.

(b) The director shall, upon receipt of this recommendation, or may, after a public hearing to review a petition filed with him or her requesting the suspension, signed by 20 percent of the total number of handlers and distributors by number who marketed not less than 20 percent of the volume of eggs and egg products marketed in the immediately preceding marketing season, conduct a referendum among the handlers and distributors to determine if the operation of the commission shall be suspended. However, the director shall not hold a referendum as a result of the petition unless the petitioner shows by a preponderance of the evidence that the operation of this chapter has not tended to effectuate its declared purpose.

(c) The director shall establish a referendum period, which shall not be less than 10 or more than 60 days in duration. The director may prescribe additional procedures as may be necessary to conduct the referendum. At the close of the established referendum period, the director shall tabulate the ballots filed during the period.

(d) If at least 40 percent of the total number of handlers and distributors from the list established by the director participated in the referendum, the director shall suspend the operation of this chapter, if he or she finds either one of the following:

(1) Sixty-five percent or more of the total number of handlers and distributors who voted in the referendum voted in favor of suspension, and the handlers and distributors so voting marketed a majority or more of the volume of eggs and egg products marketed in the preceding marketing season by all of the handlers and distributors who voted in the referendum.

(2) A majority of the total number of handlers and distributors who voted in the referendum voted in favor of suspension, and the handlers and distributors so voting marketed 65 percent or more of the volume of eggs and egg products marketed in the preceding season by all of the handlers and distributors who voted in the referendum.

SEC. 24. Section 75176 of the Food and Agricultural Code is amended to read:

75176. Upon suspension of the operation of this chapter and of the commission, the commission shall mail a copy of the notice of suspension to all handlers and distributors affected by the suspension whose names and addresses are on file.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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

CHAPTER 455

An act relating to the Compton Unified School District.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. (a) The state administrator appointed for the Compton Unified School District pursuant to Article 2.5 (commencing with Section 41325) of Chapter 3 of Part 24 of the Education Code, and Chapter 78 of the Statutes of 1993, shall implement the recommendations of the "Report of Priority Corrective Actions for the Compton Unified School District" published on May 4, 1993, by the Los Angeles County Office of Education. The recommendations contained therein may be modified by the state-appointed district administrator where appropriate. The corrective action plan shall be subject to periodic review and revision.

(b) The state administrator shall retain authority for the operation of the Compton Unified School District until such time as the Superintendent of Public Instruction determines that the district has met the fiscal requirements of subdivision (e) of Section 41326 of the Education Code, and has made demonstrated academic progress through implementation of the recommendations of the "Report of Priority Corrective Actions for the Compton Unified School District."

(c) The state administrator shall provide the Superintendent of Public Instruction with an annual progress report on implementation of the recommendations of the corrective action report, which shall be submitted with the annual report required pursuant to Section 41327 of the Education Code.

SEC. 2. The Legislature finds and declares that due to the unique circumstances regarding the Compton Unified School District, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

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

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

CHAPTER 456

An act to amend Sections 418.10, 425.11, 430.10, 435, 472a, 472c, 580, 581, 585, 586, 904.1, 917.1, 917.9, 1005, and 1033.5 of, to amend the heading of Chapter 5 (commencing with Section 437c) of Title 6 of Part 2 of, and to add Section 438 to, the Code of Civil Procedure, relating to actions and proceedings.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 418.10 of the Code of Civil Procedure is amended to read:

418.10. (a) A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes:

(1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her.

(2) To stay or dismiss the action on the ground of inconvenient forum.

(3) To dismiss the action pursuant to the applicable provisions of Chapter 1.5 (commencing with Section 583.110) of Title 8.

(b) The notice shall designate, as the time for making the motion, a date not more than 30 days after filing of the notice. The notice shall be served in the same manner, and at the same times, prescribed by subdivision (b) of Section 1005. The service and filing of the notice shall extend the defendant's time to plead until 15 days after service upon him or her of a written notice of entry of an order denying his or her motion, except that for good cause shown the court may extend the defendant's time to plead for an additional period not exceeding 20 days.

(c) If the motion is denied by the trial court, the defendant, within 10 days after service upon him or her of a written notice of entry of an order of the court denying his or her motion, or within any further time not exceeding 20 days that the trial court may for good cause allow, and before pleading, may petition an appropriate reviewing court for a writ of mandate to require the trial court to enter its order quashing the service of summons or staying or dismissing the action. The defendant shall file or enter his or her responsive pleading in the trial court within the time prescribed by subdivision (b) unless, on or before the last day of the defendant's time to plead, he or she serves upon the adverse party and files with the trial court a notice

that he or she has petitioned for a writ of mandate. The service and filing of the notice shall extend the defendant's time to plead until 10 days after service upon him or her of a written notice of the final judgment in the mandate proceeding. The time to plead may for good cause shown be extended by the trial court for an additional period not exceeding 20 days.

(d) No default may be entered against the defendant before expiration of his or her time to plead, and no motion under this section, or under Section 473 or 473.5 when joined with a motion under this section, or application to the court or stipulation of the parties for an extension of the time to plead, shall be deemed a general appearance by the defendant.

SEC. 2. Section 425.11 of the Code of Civil Procedure is amended to read:

425.11. (a) When a complaint or cross-complaint is filed in an action in the superior court to recover damages for personal injury or wrongful death, the party against whom the action is brought may at any time request a statement setting forth the nature and amount of damages being sought. The request shall be served upon the plaintiff or cross-complainant, who shall serve a responsive statement as to the damages within 15 days thereafter. In the event that a response is not served, the party, on notice to the plaintiff or cross-complainant, may petition the court in which the action is pending to order the plaintiff or cross-complainant to serve a responsive statement.

(b) If no request is made for the statement referred to in subdivision (a), the plaintiff shall serve the statement on the defendant (1) before a default may be taken; or (2) in the event an answer is filed, at least 60 days prior to date set for the trial.

(c) The statement referred to in subdivision (a) shall be served in the following manner:

(1) If a party has not appeared in the action, the statement shall be served in the same manner as a summons.

(2) If a party has appeared in the action, the statement shall be served upon his or her attorney, or upon the party if he or she has appeared without an attorney, in the manner provided for service of a summons or in the manner provided by Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

SEC. 3. Section 430.10 of the Code of Civil Procedure is amended to read:

430.10. The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds:

(a) The court has no jurisdiction of the subject of the cause of action alleged in the pleading.

(b) The person who filed the pleading does not have the legal capacity to sue.

(c) There is another action pending between the same parties on

the same cause of action.

(d) There is a defect or misjoinder of parties.

(e) The pleading does not state facts sufficient to constitute a cause of action.

(f) The pleading is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible.

(g) In an action founded upon a contract, it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct.

(h) No certificate was filed as required by Section 411.35.

(i) No certificate was filed as required by Section 411.36.

SEC. 3.5. Section 435 of the Code of Civil Procedure is amended to read:

435. (a) As used in this section:

(1) The term "complaint" includes a cross-complaint.

(2) The term "pleading" means a demurrer, answer, complaint, or cross-complaint.

(b) (1) Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof, but this time limitation shall not apply to motions specified in subdivision (e).

(2) A notice of motion to strike the answer or the complaint, or a portion thereof, shall specify a hearing date set in accordance with Section 1005.

(3) A notice of motion to strike a demurrer, or a portion thereof, shall set the hearing thereon concurrently with the hearing on the demurrer.

(c) If a party serves and files a notice of motion to strike without demurring to the complaint, the time to answer is extended and no default may be entered against that defendant, except as provided in Sections 585 and 586.

(d) The filing of a notice of motion to strike an answer or complaint, or portion thereof, shall not extend the time within which to demur.

(e) A motion to strike, as specified in this section, may be made as part of a motion pursuant to subparagraph (A) of paragraph (1) of subdivision (i) of Section 438.

SEC. 4. The heading of Chapter 5 (commencing with Section 437c) of Title 6 of Part 2 of the Code of Civil Procedure is amended to read:

CHAPTER 5. SUMMARY JUDGMENTS AND MOTIONS FOR JUDGMENT ON THE PLEADINGS

SEC. 5. Section 438 is added to the Code of Civil Procedure, to read:

438. (a) As used in this section:

(1) "Complaint" includes a cross-complaint.

(2) "Plaintiff" includes a cross-complainant.

(3) "Defendant" includes a cross-defendant.

(b) (1) A party may move for judgment on the pleadings.

(2) The court may upon its own motion grant a motion for judgment on the pleadings.

(c) (1) The motion provided for in this section may only be made on one of the following grounds:

(A) If the moving party is a plaintiff, that the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint.

(B) If the moving party is a defendant, that either of the following conditions exist:

(i) The court has no jurisdiction of the subject of the cause of action alleged in the complaint.

(ii) The complaint does not state facts sufficient to constitute a cause of action against that defendant.

(2) The motion provided for in this section may be made as to either of the following:

(A) The entire complaint or cross-complaint or as to any of the causes of action stated therein.

(B) The entire answer or one or more of the separate defenses set forth in the answer.

(3) If the court on its own motion grants the motion for judgment on the pleadings, it shall be on one of the following bases:

(A) If the motion is granted in favor of the plaintiff, it shall be based on the grounds that the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint.

(B) If the motion is granted in favor of the defendant, that either of the following conditions exist:

(i) The court has no jurisdiction of the subject of the cause of action alleged in the complaint.

(ii) The complaint does not state facts sufficient to constitute a cause of action against that defendant.

(d) The grounds for motion provided for in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. Where the motion is based on a matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, the matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit.

(e) No motion may be made pursuant to this section if a pretrial conference order has been entered pursuant to Section 575, or within 30 days of the date the action is initially set for trial, whichever is later, unless the court otherwise permits.

(f) The motion provided for in this section may be made only after one of the following conditions has occurred:

(1) If the moving party is a plaintiff, and the defendant has

already filed his or her answer to the complaint and the time for the plaintiff to demur to the answer has expired.

(2) If the moving party is a defendant, and the defendant has already filed his or her answer to the complaint and the time for the defendant to demur to the complaint has expired.

(g) The motion provided for in this section may be made even though either of the following conditions exist, provided that there is a material change in applicable case law or statute:

(1) The moving party has already demurred to the complaint or answer, as the case may be, on the same grounds as is the basis for the motion provided for in this section and the demurrer has been overruled.

(2) The moving party did not demur to the complaint or answer, as the case may be, on the same grounds as is the basis for the motion provided for in this section.

(h) (1) The motion provided for in this section may be granted with or without leave to file an amended complaint or answer, as the case may be.

(2) Where a motion is granted pursuant to this section with leave to file an amended complaint or answer, as the case may be, then the court shall grant 30 days to the party against whom the motion was granted to file an amended complaint or answer, as the case may be.

(3) If the motion is granted with respect to the entire complaint or answer without leave to file an amended complaint or answer, as the case may be, then judgment shall be entered forthwith in accordance with the motion granting judgment to the moving party.

(4) If the motion is granted with leave to file an amended complaint or answer, as the case may be, then the following procedures shall be followed:

(A) If an amended complaint is filed after the time to file an amended complaint has expired, then the court may strike the complaint pursuant to Section 436 and enter judgment in favor of that defendant against that plaintiff or a plaintiff.

(B) If an amended answer is filed after the time to file an amended answer has expired, then the court may strike the answer pursuant to Section 436 and proceed to enter judgment in favor of that plaintiff and against that defendant or a defendant.

(C) Except where subparagraphs (A) and (B) apply, if the motion is granted with respect to the entire complaint or answer with leave to file an amended complaint or answer, as the case may be, but an amended complaint or answer is not filed, then after the time to file an amended complaint or answer, as the case may be, has expired, judgment shall be entered forthwith in favor of the moving party.

(i) (1) Where a motion for judgment on the pleadings is granted with leave to amend, the court shall not enter a judgment in favor of a party until the following proceedings are had:

(A) If an amended pleading is filed and the moving party contends that pleading is filed after the time to file an amended

pleading has expired or that the pleading is in violation of the court's prior ruling on the motion, then that party shall move to strike the pleading and enter judgment in its favor.

(B) If no amended pleading is filed, then the party shall move for entry of judgment in its favor.

(2) All motions made pursuant to this subdivision shall be made pursuant to Section 1010.

(3) At the hearing on the motion provided for in this subdivision, the court shall determine whether to enter judgment in favor of a particular party.

SEC. 6. Section 472a of the Code of Civil Procedure is amended to read:

472a. (a) A demurrer is not waived by an answer filed at the same time.

(b) Except as otherwise provided by rule adopted by the Judicial Council, when a demurrer to a complaint or to a cross-complaint is overruled and there is no answer filed, the court shall allow an answer to be filed upon such terms as may be just. If a demurrer to the answer is overruled, the action shall proceed as if no demurrer had been interposed, and the facts alleged in the answer shall be considered as denied to the extent mentioned in Section 431.20.

(c) When a demurrer is sustained, the court may grant leave to amend the pleading upon any terms as may be just and shall fix the time within which the amendment or amended pleading shall be filed. When a demurrer is stricken pursuant to Section 436 and there is no answer filed, the court shall allow an answer to be filed on terms that are just.

(d) When a motion to strike is granted pursuant to Section 436, the court may order that an amendment or amended pleading be filed upon terms it deems proper. When a motion to strike a complaint or cross-complaint, or portion thereof, is denied, the court shall allow the party filing the motion to strike to file an answer.

(e) When a motion to dismiss an action pursuant to Article 2 (commencing with Section 583.210) of Chapter 1.5 of Title 8 is denied, the court shall allow a pleading to be filed.

SEC. 7. Section 472c of the Code of Civil Procedure is amended to read:

472c. (a) When any court makes an order sustaining a demurrer without leave to amend the question as to whether or not such court abused its discretion in making such an order is open on appeal even though no request to amend such pleading was made.

(b) The following orders shall be deemed open on appeal where an amended pleading is filed after the court's order:

(1) An order sustaining a demurrer to a cause of action within a complaint or cross-complaint where the order did not sustain the demurrer as to the entire complaint or cross-complaint.

(2) An order sustaining a demurrer to an affirmative defense within an answer where the order sustaining the demurrer did not sustain the demurrer as to the entire answer.

(3) An order granting a motion to strike a portion of a pleading where the order granting the motion to strike did not strike the entire pleading.

(c) As used in this section, "open on appeal" means that a party aggrieved by an order listed in subdivision (b) may claim the order as error in an appeal from the final judgment in the action.

SEC. 8. Section 580 of the Code of Civil Procedure is amended to read:

580. The relief granted to the plaintiff, if there is no answer, cannot exceed that which he or she shall have demanded in his or her complaint or in the statement required by Section 425.11; but in any other case, the court may grant the plaintiff any relief consistent with the case made by the complaint and embraced within the issue.

SEC. 9. Section 581 of the Code of Civil Procedure is amended to read:

581. (a) As used in this section:

(1) "Action" means any civil action or special proceeding.

(2) "Complaint" means a complaint and a cross-complaint.

(3) "Court" means the court in which the action is pending.

(4) "Defendant" includes a cross-defendant.

(5) "Plaintiff" includes a cross-complainant.

(6) "Trial." A trial shall be deemed to actually commence at the beginning of the opening statement or argument of any party or his or her counsel, or if there is no opening statement, then at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence.

(b) An action may be dismissed in any of the following instances:

(1) With or without prejudice, upon written request of the plaintiff to the clerk, filed with papers in the case, or by oral or written request to the court at any time before the actual commencement of trial, upon payment of the costs, if any.

(2) With or without prejudice, by any party upon the written consent of all other parties.

(3) By the court, without prejudice, when no party appears for trial following 30 days' notice of time and place of trial.

(4) By the court, without prejudice, when dismissal is made pursuant to the applicable provisions of Chapter 1.5 (commencing with Section 583.110).

(5) By the court, without prejudice, when either party fails to appear on the trial and the other party appears and asks for dismissal.

(c) A plaintiff may dismiss his or her complaint, or any cause of action asserted in it, in its entirety, or as to any defendant or defendants, with or without prejudice prior to the actual commencement of trial.

(d) Except as otherwise provided in subdivision (e), the court shall dismiss the complaint, or any cause of action asserted in it, in its entirety or as to any defendant, with prejudice, when upon the trial and before the final submission of the case, the plaintiff abandons it.

(e) After the actual commencement of trial, the court shall dismiss the complaint, or any causes of action asserted in it, in its entirety or as to any defendants, with prejudice, if the plaintiff requests a dismissal, unless all affected parties to the trial consent to dismissal without prejudice or by order of the court dismissing the same without prejudice on a showing of good cause.

(f) The court may dismiss the complaint as to that defendant when:

(1) Except where Section 597 applies, after a demurrer to the complaint is sustained without leave to amend and either party moves for dismissal.

(2) Except where Section 597 applies, after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal.

(3) After a motion to strike the whole of a complaint is granted without leave to amend and either party moves for dismissal.

(4) After a motion to strike the whole of a complaint or portion thereof is granted with leave to amend the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal.

(g) The court may dismiss without prejudice the complaint in whole, or as to that defendant, when dismissal is made under the applicable provisions of Chapter 1.5 (commencing with Section 583.110).

(h) The court may dismiss without prejudice the complaint in whole, or as to that defendant, when dismissal is made pursuant to Section 418.10.

(i) No dismissal of an action may be made or entered, or both, under paragraph (1) of subdivision (b) where affirmative relief has been sought by the cross-complaint of a defendant or if there is a motion pending for an order transferring the action to another court under the provisions of Section 396b.

(j) No dismissal may be made or entered, or both, under paragraph (1) or (2) of subdivision (b) except upon the written consent of the attorney for the party or parties applying therefor, or if consent of the attorney is not obtained, upon order of dismissal by the court after notice to the attorney.

(k) No action may be dismissed which has been determined to be a class action under the provisions of this code unless and until notice that the court deems adequate has been given and the court orders the dismissal.

(*l*) The court may dismiss, without prejudice, the complaint in whole, or as to that defendant when either party fails to appear at the trial and the other party appears and asks for the dismissal.

(m) The provisions of this section shall not be deemed to be an exclusive enumeration of the court's power to dismiss an action or dismiss a complaint as to a defendant.

SEC. 10. Section 585 of the Code of Civil Procedure is amended

to read:

585. Judgment may be had, if the defendant fails to answer the complaint, as follows:

(a) In an action arising upon contract or judgment for the recovery of money or damages only, if the defendant has, or if more than one defendant, if any of the defendants have, been served, other than by publication, and no answer, demurrer, notice of motion to strike (of the character hereinafter specified), notice of motion to transfer pursuant to Section 396b, notice of motion to dismiss pursuant to Article 2 (commencing with Section 583.210) of Chapter 1.5 of Title 8, notice of motion to quash service of summons or to stay or dismiss the action pursuant to Section 418.10, or notice of the filing of a petition for writ of mandate as provided in Section 418.10 has been filed with the clerk or judge of the court within the time specified in the summons, or such further time as may be allowed, the clerk, or the judge if there is no clerk, upon written application of the plaintiff, and proof of the service of summons, shall enter the default of the defendant or defendants, so served, and immediately thereafter enter judgment for the principal amount demanded in the complaint or the statement required by Section 425.11, or a lesser amount if credit has been acknowledged, together with interest allowed by law or in accordance with the terms of the contract, and the costs against the defendant, or defendants, or against one or more of the defendants. If, by rule of court, a schedule of attorneys' fees to be allowed has been adopted, the clerk may include in the judgment attorneys' fees in accordance with such schedule (1) if the contract provides that attorneys' fees shall be allowed in the event of an action thereon, or (2) if the action is one in which the plaintiff is entitled by statute to recover attorneys' fees in addition to money or damages. The plaintiff shall file a written request at the time of application for entry of the default of the defendant or defendants, to have attorneys' fees fixed by the court, whereupon, after the entry of the default, the court shall hear the application for determination of the attorneys' fees and shall render judgment for such fees and for the other relief demanded in the complaint or the statement required by Section 425.11, or a lesser amount if credit has been acknowledged, and the costs against the defendant, or defendants, or against one or more of the defendants.

(b) In other actions, if the defendant has been served, other than by publication, and no answer, demurrer, notice of motion to strike (of the character hereinafter specified), notice of motion to transfer pursuant to Section 396b, notice of motion to dismiss pursuant to Article 2 (commencing with Section 583.210) of Chapter 1.5 of Title 8, notice of motion to quash service of summons or to stay or dismiss the action pursuant to Section 418.10 or notice of the filing of a petition for writ of mandate as provided in Section 418.10 has been filed with the clerk or judge of the court within the time specified in the summons, or such further time as may be allowed, the clerk, or the judge if there is no clerk, upon written application of the

plaintiff, shall enter the default of the defendant. The plaintiff thereafter may apply to the court for the relief demanded in the complaint; the court shall hear the evidence offered by the plaintiff, and shall render judgment in his or her favor for such sum (not exceeding the amount stated in the complaint or in the statement required by Section 425.11), as appears by such evidence to be just. If the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment or to carry the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a reference for that purpose. If the action is for the recovery of damages, in whole or in part, the court may order the damages to be assessed by a jury; or if, to determine the amount of damages, the examination of a long account is involved by a reference as above provided.

(c) In all actions where the service of the summons was by publication, upon the expiration of the time for answering, and upon proof of the publication and that no answer, demurrer, notice of motion to strike (of the character hereinafter specified), notice of motion to transfer pursuant to Section 396b, notice of motion to dismiss pursuant to Article 2 (commencing with Section 583.210) of Chapter 1.5 of Title 8, notice of motion to quash service of summons or to stay or dismiss the action pursuant to Section 418.10, or notice of the filing of a petition for writ of mandate as provided in Section 418.10 has been filed, the clerk, or the judge if there is no clerk, upon written application of the plaintiff, shall enter the default of the defendant. The plaintiff thereafter may apply to the court for the relief demanded in the complaint; and the court shall hear the evidence offered by the plaintiff, and shall render judgment in his or her favor for such sum (not exceeding the amount stated in the complaint or in the statement required by Section 425.11), as appears by such evidence to be just. If the defendant is not a resident of the state, shall require the plaintiff, or his or her agent, to be examined, on oath, respecting any payments that have been made to the plaintiff, or to anyone for his or her use, on account of any demand mentioned in the complaint or the statement required by Section 425.11, and may render judgment for the amount which he or she is entitled to recover. In all cases affecting the title to or possession of real property, where the service of the summons was by publication and the defendant has failed to answer, no judgment shall be rendered upon proof of mere occupancy, unless such occupancy shall have continued for the time and shall have been of the character necessary to confer title by prescription. In all cases where the plaintiff bases his or her claim upon a paper title, the court shall require evidence establishing plaintiff's equitable right to judgment before rendering judgment. In actions involving only the possession of real property where the complaint is verified and shows by proper allegations that no party to the action claims title to the real property involved, either by prescription, accession, transfer, will, or succession, but only the possession thereof, the court may render

judgment upon proof of occupancy by plaintiff and ouster by defendant.

(d) In the cases referred to in subdivisions (b) and (c), or upon an application to have attorneys' fees fixed by the court pursuant to subdivision (a), the court in its discretion may permit the use of affidavits, in lieu of personal testimony, as to all or any part of the evidence or proof required or permitted to be offered, received, or heard in such cases. The facts stated in such affidavit or affidavits shall be within the personal knowledge of the affiant and shall be set forth with particularity, and each affidavit shall show affirmatively that the affiant, if sworn as a witness, can testify competently thereto.

(e) If a defendant files a cross-complaint against another defendant or the plaintiff, a default may be entered against that party on that cross-complaint if the plaintiff or that cross-defendant has been served with that cross-complaint and he or she has failed to file an answer, demurrer, notice of motion to strike of the character specified in subdivision (f), notice of motion to transfer pursuant to Section 396b, notice of motion to dismiss pursuant to Article 2 (commencing with Section 583.210) of Chapter 1.5 of Title 8, notice of motion to quash service of summons or to stay or dismiss the action pursuant to Section 418.10, or notice of the filing of a petition for a writ of mandate as provided in Section 418.10 within the time specified in the summons, or such other time as may be allowed. However, no judgment may separately be entered on that cross-complaint unless a separate judgment may, in fact, be properly awarded on that cross-complaint and the court finds that a separate judgment on that cross-complaint would not substantially delay the final disposition of the action between the parties.

(f) A notice of motion to strike within the meaning of this section is a notice of motion to strike the whole or any part of a pleading filed within the time which the moving party is required otherwise to plead to such pleading. The notice of motion to strike shall specify a hearing date set in accordance with Section 1005. The filing of a notice of motion does not extend the time within which to demur.

SEC. 11. Section 586 of the Code of Civil Procedure is amended to read:

586. (a) In the following cases the same proceedings shall be had, and judgment shall be rendered in the same manner, as if the defendant had failed to answer:

(1) If the complaint has been amended, and the defendant fails to answer it, as amended, or demur thereto, or file a notice of motion to strike, of the character specified in Section 585, within 30 days after service thereof or within the time allowed by the court.

(2) If the demurrer to the complaint is overruled and a motion to strike, of the character specified in Section 585, is denied, or where only one thereof is filed, if the demurrer is overruled or the motion to strike is denied, and the defendant fails to answer the complaint within the time allowed by the court.

(3) If a motion to strike, of the character specified in Section 585,

is granted in whole or in part, and the defendant fails to answer the unstricken portion of the complaint within the time allowed by the court, no demurrer having been sustained or being then pending.

(4) If a motion to quash service of summons or to stay or dismiss, the action has been filed or writ of mandate sought and notice thereof given, as provided in Section 418.10, and upon denial of such motion or writ, defendant fails to respond to the complaint, within the time provided in such section or as otherwise provided by law.

(5) If the demurrer to the answer is sustained and the defendant fails to amend the answer within the time allowed by the court.

(6) (A) If a motion to transfer pursuant to Section 396b is denied and the defendant fails to respond to the complaint within the time allowed by the court pursuant to subdivision (e) of Section 396b or within the time provided in subparagraph (C).

(B) If a motion to transfer pursuant to Section 396b is granted and the defendant fails to respond to the complaint within 30 days of the mailing of notice of the filing and case number by the clerk of the court to which the action or proceeding is transferred or within the time provided in subparagraph (C).

(C) If the order granting or denying a motion to transfer pursuant to Section 396a or 396b is the subject of an appeal pursuant to Section 904.2 or 904.3 in which a stay is granted or of a mandate proceeding pursuant to Section 400, the court having jurisdiction over the trial, upon application or on its own motion after such appeal or mandate proceeding becomes final or upon earlier termination of a stay, shall allow the defendant a reasonable time to respond to the complaint. Notice of the order allowing the defendant further time to respond to the complaint shall be promptly served by the party who obtained such order or by the clerk if the order is made on the court's own motion.

(7) If a motion to strike the answer in whole, of the character specified in Section 585, is granted without leave to amend, or if a motion to strike the answer in whole or in part, of the character specified in Section 585, is granted with leave to amend and the defendant fails to amend the answer within the time allowed by the court.

(b) For the purposes of this section, "respond" means to answer, to demur, or to move to strike.

SEC. 12. Section 904.1 of the Code of Civil Procedure is amended to read:

904.1. (a) An appeal may be taken from a superior court in the following cases:

(1) From a judgment, except (A) an interlocutory judgment, other than as provided in paragraphs (8), (9), and (11), (B) a judgment of contempt which is made final and conclusive by Section 1222, (C) a judgment on appeal from a municipal court or a justice court or a small claims court, or (D) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a municipal court or a justice court or the judge or judges thereof

which relates to a matter pending in the municipal or justice court. However, an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition, or a judgment or order for the payment of monetary sanctions, upon petition for an extraordinary writ.

(2) From an order made after a judgment made appealable by paragraph (1).

(3) From an order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum.

(4) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(5) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(6) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(7) From an order appointing a receiver.

(8) From an interlocutory judgment, order, or decree, hereafter made or entered in an action to redeem real or personal property from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting.

(9) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.

(10) From an order made appealable by the provisions of the Probate Code or the Family Code.

(11) From an interlocutory judgment directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000).

(12) From an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000).

(b) Sanction orders or judgments of five thousand dollars ($5,000) or less against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.

SEC. 13. Section 917.1 of the Code of Civil Procedure is amended to read:

917.1. (a) Unless an undertaking is given, the perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order is for any of the following:

(1) Money or the payment of money, whether consisting of a special fund or not, and whether payable by the appellant or another party to the action.

(2) Costs awarded pursuant to Section 998 which otherwise would not have been awarded as costs pursuant to Section 1033.5.

(3) Costs awarded pursuant to Section 1141.21 which otherwise would not have been awarded as costs pursuant to Section 1033.5.

(b) The undertaking shall be on condition that if the judgment or order or any part of it is affirmed or the appeal is withdrawn or dismissed, the party ordered to pay shall pay the amount of the judgment or order, or the part of it as to which the judgment or order is affirmed, as entered after the receipt of the remittitur, together with any interest which may have accrued pending the appeal and entry of the remittitur, and costs which may be awarded against the appellant on appeal. This section shall not apply in cases where the money to be paid is in the actual or constructive custody of the court; and such cases shall be governed, instead, by the provisions of Section 917.2. The undertaking shall be for double the amount of the judgment or order unless given by an admitted surety insurer in which event it shall be for one and one-half times the amount of the judgment or order. The liability on the undertaking may be enforced if the party ordered to pay does not make the payment within 30 days after the filing of the remittitur from the reviewing court.

(c) If a surety on the undertaking pays the judgment, either with or without action, after the judgment is affirmed, the surety is substituted to the rights of the creditor and is entitled to control, enforce, and satisfy the judgment, in all respects as if the surety had recovered the judgment.

(d) Costs awarded by the trial court under Chapter 6 (commencing with Section 1021) of Title 14 shall be included in the amount of the judgment or order for the purpose of applying paragraph (1) of subdivision (a) and subdivision (b). However, no undertaking shall be required pursuant to this section solely for costs awarded under Chapter 6 (commencing with Section 1021) of Title 14.

SEC. 14. Section 917.9 of the Code of Civil Procedure is amended to read:

917.9. (a) The perfecting of an appeal shall not stay enforcement of the judgment or order in cases not provided for in Sections 917.1 to 917.8, inclusive, if the trial court, in its discretion, requires an undertaking and the undertaking is not given, in any of the following cases:

(1) Appellant was found to possess money or other property belonging to respondent.

(2) Appellant is required to perform an act for respondent's benefit pursuant to judgment or order under appeal.

(3) The judgment against appellant is solely for costs awarded to the respondent by the trial court pursuant to Chapter 6 (commencing with Section 1021) of Title 14.

(b) The undertaking shall be in the sum fixed by the court and be in an amount sufficient to cover all damages which the respondent may sustain by reason of the stay in the enforcement of the judgment or order.

(c) The undertaking shall be in the sum fixed by the court; it shall be conditioned upon the performance of the judgment or order appealed from or payment of the sums required by the judgment or

order appealed from, if the judgment or order is affirmed or the appeal is withdrawn or dismissed, and it shall provide that if the judgment or order appealed from or any part of it is affirmed, or the appeal is withdrawn or dismissed, the appellant will pay all damages which the respondent may sustain by reason of the stay in the enforcement of the judgment.

(d) For the purpose of this section, "damages" means either of the following:

(1) Reasonable compensation for the loss of use of the money or property.

(2) Payment of the amounts specified in paragraph (3) of subdivision (a).

SEC. 14.5. Section 1005 of the Code of Civil Procedure is amended to read:

1005. (a) Written notice shall be given, as prescribed in subdivision (b), for the following motions:

(1) Notice of Application and Hearing for Writ of Attachment under Section 484.040.

(2) Notice of Application and Hearing for Claim and Delivery under Section 512.030.

(3) Notice of Hearing for Claim of Exemption under Section 706.105.

(4) Motion to Quash Summons pursuant to subdivision (b) of Section 418.10.

(5) Motion for Determination of Good Faith Settlement pursuant to Section 877.6.

(6) Hearing for Discovery of Peace Officer Personnel Records pursuant to Section 1043 of the Evidence Code.

(7) Notice of Hearing of Third-Party Claim pursuant to Section 720.320.

(8) Motion for an Order to Attend Deposition more than 150 miles from deponent's residence pursuant to paragraph (3) of subdivision (e) of Section 2025.

(9) Notice of Hearing of Application for Relief pursuant to Section 946.6 of the Government Code.

(10) Motion to Set Aside Default or Default Judgment and for Leave to Defend Actions pursuant to Section 473.5.

(11) Motion to Expunge Notice of Pendency of Action pursuant to Section 405.30.

(12) Motion to Set Aside Default and for Leave to Amend pursuant to Section 585.5.

(13) Any other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge.

(b) Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 15 calendar days before the time appointed for the hearing. However, if the notice is served by mail, the required 15-day period of notice before the time appointed for the hearing shall be increased by five

days if the place of mailing and the place of address are within the State of California, 10 days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 days if either the place of mailing or the place of address is outside the United States, and if the notice is served by facsimile transmission, Express Mail, or another method of delivery providing for overnight delivery, the required 15-day period of notice before the time appointed for the hearing shall be increased by two court days. Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion governed by this section. All papers opposing a motion so noticed shall be filed with the court and served on each party at least five court days, and all reply papers at least two court days before the time appointed for the hearing.

The court, or a judge thereof, may prescribe a shorter time.

SEC. 15. Section 1033.5 of the Code of Civil Procedure is amended to read:

1033.5. (a) The following items are allowable as costs under Section 1032:

(1) Filing, motion, and jury fees.

(2) Juror food and lodging while they are kept together during trial and after the jury retires for deliberation.

(3) Taking, videotaping, and transcribing necessary depositions including an original and one copy of those taken by the claimant and one copy of depositions taken by the party against whom costs are allowed, and travel expenses to attend depositions.

(4) Service of process by a public officer, registered process server, or other means, as follows:

(A) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.

(B) If service is by a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code, the recoverable cost is the amount actually incurred in effecting service, including, but not limited to, a stakeout or other means employed in locating the person to be served, unless such charges are successfully challenged by a party to the action.

(C) When service is by publication, the recoverable cost is the sum actually incurred in effecting service.

(D) When service is by a means other than that set forth in subparagraph (A), (B) or (C), the recoverable cost is the lesser of the sum actually incurred, or the amount allowed to a public officer in this state for such service, except that the court may allow the sum actually incurred in effecting service upon application pursuant to paragraph (4) of subdivision (c).

(5) Expenses of attachment including keeper's fees.

(6) Premiums on necessary surety bonds.

(7) Ordinary witness fees pursuant to Section 68093 of the Government Code.

(8) Fees of expert witnesses ordered by the court.
(9) Transcripts of court proceedings ordered by the court.
(10) Attorney fees, when authorized by any of the following:
(A) Contract.
(B) Statute.
(C) Law.
(11) Court reporters fees as established by statute.
(12) Models and blowups of exhibits and photocopies of exhibits may be allowed if they were reasonably helpful to aid the trier of fact.
(13) Any other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal.

(b) The following items are not allowable as costs, except when expressly authorized by law:
(1) Fees of experts not ordered by the court.
(2) Investigation expenses in preparing the case for trial.
(3) Postage, telephone, and photocopying charges, except for exhibits.
(4) Costs in investigation of jurors or in preparation for voir dire.
(5) Transcripts of court proceedings not ordered by the court.

(c) Any award of costs shall be subject to the following:
(1) Costs are allowable if incurred, whether or not paid.
(2) Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation.
(3) Allowable costs shall be reasonable in amount.
(4) Items not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion.
(5) When any statute of this state refers to the award of "costs and attorney's fees," attorney's fees are an item and component of the costs to be awarded and are allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a). Any claim not based upon the court's established schedule of attorney's fees for actions on a contract shall bear the burden of proof. Attorney's fees allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a) may be fixed as follows: (A) upon a noticed motion, (B) at the time a statement of decision is rendered, (C) upon application supported by affidavit made concurrently with a claim for other costs, or (D) upon entry of default judgment. Attorney's fees allowable as costs pursuant to subparagraph (A) or (C) of paragraph (10) of subdivision (a) shall be fixed either upon a noticed motion or upon entry of a default judgment, unless otherwise provided by stipulation of the parties.

Attorney's fees awarded pursuant to Section 1717 of the Civil Code are allowable costs under Section 1032 as authorized by subparagraph (A) of paragraph (10) of subdivision (a).

CHAPTER 457

An act to amend Section 290.2 of the Penal Code, relating to sex offenders.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 290.2 of the Penal Code is amended to read:

290.2. (a) Any person who is required to register under Section 290 because of the commission of, or the attempt to commit, a felony offense specified in Section 290, or who is convicted of murder in violation of Section 190 or 190.05, or who is convicted of a felony offense of assault or battery in violation of Section 217.1, 220, 241.1, 243, 243.1, 243.3, 243.4, 243.7, 244, 245, 245.2, 245.3, or 245.5, and who is discharged or paroled from a state prison, county jail, or any institution under the jurisdiction of the Department of the Youth Authority where he or she was confined, or is granted probation, or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, the granting of probation, or release, be required to provide two specimens of blood and a saliva sample to that institution or, in the case of a person granted probation, to a person and at a location within the county designated for testing. The county shall make every effort to utilize one location for testing a person under this section.

The withdrawal of blood shall be performed in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist, or clinical laboratory bioanalyst may withdraw the blood specimens for purposes of this section.

(b) The Department of Justice shall provide all blood specimen vials, mailing tubes, labels, and instructions for the collection of the blood specimens and saliva samples. The specimens and samples shall thereafter be forwarded to the Department of Justice for analysis of deoxyribonucleic acid (DNA) and other genetic typing analysis at the department's DNA laboratory. The Department of Justice may provide samples from these specimens to local public DNA laboratories for law enforcement purposes provided that the other privacy provisions of this section are followed by the local laboratory.

The Department of Justice shall perform DNA analysis and other genetic typing analysis only for law enforcement purposes.

(c) Additional specimens may be collected pursuant to subdivision (a) and sent to a local public DNA laboratory for DNA analysis and other genetic typing analysis if each of the following

conditions are met:

(1) The methodologies and procedures used by the local public DNA laboratory for analysis are the same as those established by the Department of Justice pursuant to subdivision (j).

(2) Only tests of value to law enforcement for identification purposes are performed and a copy of the results of the analysis are sent to the Department of Justice.

(3) All provisions concerning privacy and security enumerated in this section are followed.

(4) The local public DNA laboratory assumes all costs of securing the sample and provides appropriate tubes, labels, and instructions necessary to secure the samples.

(d) The Department of Justice DNA laboratory shall perform genetic typing only for those markers having value for law enforcement purposes.

For purposes of this subdivision, "marker" shall have the meaning generally ascribed to it by members of the scientific community experienced in the use of DNA technology.

(e) The DNA and other genetic typing information shall be filed with the offender's file maintained by the Sex Registration Unit of the Department of Justice or in a computerized data bank system, and shall not be included in the state summary criminal history information.

The computerized data bank system shall be limited to containing information only on individuals convicted of crimes specified in subdivision (a), or evidence accumulated from crime scenes during ongoing investigations and believed to have been left by a person suspected of having committed a violent felony specified in subdivision (c) of Section 667.5 or an offense specified in Section 290. Evidence accumulated pursuant to this provision from any crime scene with respect to a particular person shall be stricken from the data bank when it is determined that the person is no longer a suspect in the case.

(f) The DNA and other genetic typing information shall be released only to law enforcement agencies and district attorneys' offices, at the request of the agency, except as specified in this section. Dissemination of this information to law enforcement agencies and district attorneys' offices outside the state shall be done in conformity with the provisions of this section.

(g) Any person who knowingly discloses DNA or other genetic typing information developed pursuant to this section to unauthorized individuals or agencies, or for other than law enforcement purposes, shall be guilty of a misdemeanor.

(h) Furnishing DNA or other genetic typing information to defense counsel for criminal defense purposes in compliance with discovery is not a violation of this section.

(i) It is not a violation of this section to disseminate statistical or research information obtained from the offender's file or the computerized data bank system, provided that the subject of the file

is not identified and cannot be identified from the information disclosed. It is also not a violation of this section to include information obtained from a file as follows: (1) in a transcript or record of a judicial proceeding, or (2) in any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(j) The Department of Justice shall make public the methodology and procedures to be used in its DNA program prior to the commencement of DNA testing in its laboratories. The Department of Justice shall review and consider on an ongoing basis the findings and results of any peer review and validation studies submitted to the department by members of the relevant scientific community experienced in the use of DNA technology.

CHAPTER 458

An act to amend Sections 1797.1, 1797.2, 1797.3, 1797.4, 1797.5, 1797.6, and 1797.7 of the Civil Code, and to amend Section 18062.8 of, and to add Section 18062.9 to, the Health and Safety Code, relating to housing.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 1797.1 of the Civil Code is amended to read:

1797.1. As used in this chapter:

(a) "Contractor" means any person who is a general building contractor within the meaning of Section 7057 of the Business and Professions Code.

(b) "Dealer" means any person who is a dealer within the meaning of Section 18002.6 of the Health and Safety Code.

(c) "Mobilehome" and "manufactured home" have the meanings, respectively, defined in Sections 18007 and 18008 of the Health and Safety Code.

(d) "Substantial defects in materials and workmanship" means defects objectively manifested by broken, ripped, cracked, stained, or missing parts or components, or workmanship resulting in improper function of materials, components, appliances, or systems as installed or manufactured by the contractor, dealer, or manufacturer.

SEC. 2. Section 1797.2 of the Civil Code is amended to read:

1797.2. The warranty provided for in this chapter shall apply to the manufacturer of the mobilehome or the manufactured home as well as to the contractor or dealer who sells the mobilehome or the manufactured home to the buyer. The warranty shall cover the electrical, plumbing, heating, cooling, fire safety, and structural

systems, and all appliances of the mobilehome or manufactured home as installed or manufactured by the contractor, dealer, or manufacturer.

SEC. 3. Section 1797.3 of the Civil Code is amended to read:

1797.3. The mobilehome/manufactured home warranty from the contractor, manufacturer, or dealer to the buyer shall be set forth in a separate written document that reprints all of the provisions of this chapter and shall be delivered to the buyer by the contractor or dealer at the time the contract of sale is signed, and shall contain, but is not limited to, the following terms:

(a) That the mobilehome or manufactured home is free from any substantial defects in materials or workmanship.

(b) That the contractor, manufacturer, or dealer or any or all of them shall take appropriate corrective action at the site of the mobilehome or manufactured home in instances of substantial defects in materials or workmanship which become evident within one year from the date of delivery of the mobilehome or manufactured home to the buyer, provided the buyer or his or her transferee gives written notice of those defects to the contractor, manufacturer, or dealer at their business address not later than one year and 10 days after date of delivery.

(c) That the manufacturer and the contractor or dealer shall be jointly and severally liable to the buyer for the fulfillment of the terms of warranty, and that the buyer may notify either one or both of the need for appropriate corrective action in instances of substantial defects in materials or workmanship.

(d) That the address and the phone number of where to mail or deliver written notices of defects shall be set forth in the document.

(e) That the one-year warranty period applies to the plumbing, heating, electrical, cooling, fire safety, and structural systems and all appliances of the mobilehome or manufactured home.

(f) That, while the manufacturers of any or all appliances may also issue their own warranties, the primary responsibility for appropriate corrective action under the warranty rests with the contractor or dealer and the manufacturer, and the buyer should report all complaints to the contractor or dealer and the manufacturer initially.

(g) That, if corrective action taken by the manufacturer or the contractor or dealer fails to eliminate a substantial defect, then the material, system, appliance, or component shall be replaced in kind. As used in this subdivision, "replaced in kind" means (1) replacement with the identical material, system, appliance, or component, and, if not available (2) replacement with a comparable or better material, system, appliance, or component.

SEC. 4. Section 1797.4 of the Civil Code is amended to read:

1797.4. The warranty under this chapter shall be in addition to, and not in derogation of, all other rights and privileges which the buyer may have under any other law or instrument. The contractor, manufacturer, or dealer shall not require the buyer to waive his or her rights under this chapter, and any waiver of these rights shall be

deemed contrary to public policy and shall be unenforceable and void.

SEC. 5. Section 1797.5 of the Civil Code is amended to read:

1797.5. Every contractor or dealer shall display a copy of all of the warranty provisions required by this chapter. The copy of the warranty provisions required by this chapter shall be posted in each area where purchase orders and conditional sales contracts are written.

SEC. 6. Section 1797.6 of the Civil Code is amended to read:

1797.6. Manufacturers, contractors, and dealers shall keep records of all actions taken pursuant to this chapter, including all correspondence to or from the buyer for a period of three years from the date of delivery.

SEC. 7. Section 1797.7 of the Civil Code is amended to read:

1797.7. The contractor, dealer, or manufacturer shall complete warranty service to correct all substantial defects within 90 days of receiving the buyer's written notice specified in subdivision (b) of Section 1797.3, unless there are circumstances which are beyond the control of the contractor, dealer, or manufacturer.

SEC. 8. Section 18062.8 of the Health and Safety Code is amended to read:

18062.8. It is unlawful for any manufacturer or distributor licensed under this part to do any of the following:

(a) Refuse or fail to deliver, in reasonable quantities and within a reasonable time after receipt of an order from a dealer having a franchise for the retail sale of any new manufactured home, mobilehome, or commercial coach sold or distributed by the manufacturer or distributor, any new manufactured home, mobilehome, or commercial coach or parts or accessories to new manufactured homes, mobilehomes, or commercial coaches that are covered by the franchise, if the mobilehome or commercial coach, parts or accessories are publicly advertised as being available for delivery or actually being delivered. This subdivision is not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer or distributor.

(b) Prevent or require or attempt to prevent or require, by contract or otherwise, any change in the capital structure of a dealership, if the dealer at all times meets any reasonable capital standards agreed to by the dealer and the manufacturer or distributor, and also provided that no change in capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor.

(c) Prevent or require, or attempt to prevent or require, a dealer to change the executive management of a dealership, other than the principal dealership operator or operators, if the franchise was granted the dealer in reliance upon the personal qualifications of that person or persons.

(d) Prevent or require, or attempt to prevent or require, by

contract or otherwise, any dealer, or any officer, partner, or stockholder of any dealership, to participate in the sale or transfer of any part of the interest of any of them to any other person or persons. No dealer, officer, partner, or stockholder shall, however, have the right to sell, transfer, or assign the franchise, or any right thereunder, without the consent of the manufacturer or distributor if the consent is not unreasonably withheld.

(e) Prevent, or attempt to prevent, a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall be no transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, if the consent is not unreasonably withheld.

(f) Obtain money, goods, services, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and any other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to, the dealer.

(g) Require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this part or to require any controversy between a dealer and a manufacturer or distributor to be referred to any person other than the department, if the referral would be binding on the dealer. This subdivision shall not, however, prohibit arbitration before an independent arbitrator.

(h) Increase prices of manufactured homes, mobilehomes, or commercial coaches which the dealer had ordered for private retail consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each order. In the event of manufacturer price reductions, the amount of any reduction received by a dealer shall be passed on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reductions shall apply to all manufactured homes, mobilehomes, and commercial coaches in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series manufactured homes, mobilehomes, or commercial coaches at the time of the introduction of new models or series shall not be considered a price increase or price decrease. Price changes caused by either of the following shall not be subject to this subdivision:

(1) The addition to a manufactured home, mobilehome, or commercial coach of required or optional equipment pursuant to state or federal law.

(2) Revaluation of the United States dollar in the case of foreign-made manufactured homes, mobilehomes, or commercial coaches.

(i) Fail to pay to a dealer, within a reasonable time following receipt of a valid claim by a dealer thereof, any payment agreed to be made by the manufacturer or distributor to the dealer by reason

of the fact that a new manufactured home, mobilehome, or commercial coach of a prior year model is in the dealer's inventory at the time of introduction of new model manufactured homes, mobilehomes, or commercial coaches. A manufacturer or distributor shall not authorize or enable any new model to be delivered by dealers at retail more than 30 days prior to the eligibility date of the model change allowance payment for prior year model manufactured homes, mobilehomes, or commercial coaches.

(j) Deny the widow or heirs designated by a deceased owner of a dealership, the opportunity to participate in the ownership of the dealership or successor dealership under a valid franchise for a reasonable time after the death of the owner.

(k) Offer any refunds or other types of inducements to any dealer or other person for the purchase of new manufactured homes, mobilehomes, or commercial coaches of a certain make and model to be sold to the state or any political subdivision thereof without making the same offer to all other dealers in the same make and model within the relevant market area.

(*l*) Employ a person as a distributor who has not been licensed pursuant to this chapter.

(m) Deny any dealer the right of free association with any other dealer for any lawful purpose.

(n) Compete with a dealer in the same make and model operating under an agreement or franchise from a manufacturer or distributor in the relevant market area. A manufacturer or distributor shall not, however, be deemed to be competing when operating a dealership either temporarily for a reasonable period, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions.

(o) Unfairly discriminate among its franchisees with respect to warranty reimbursement or authority granted its franchisees to make warranty adjustments with retail customers.

(p) Sell manufactured homes, mobilehomes, or commercial coaches to persons not licensed under this part for resale, except as authorized pursuant to Section 18062.9.

(q) Fail to exercise reasonable supervision over the activities of employees who negotiate or promote the sale of manufactured homes, mobilehomes, or commercial coaches.

SEC. 9. Section 18062.9 is added to the Health and Safety Code, to read:

18062.9. A manufactured home manufacturer may sell a manufactured home, as defined in Section 18007, directly to a licensed California general building contractor, as defined in Section 7057 of the Business and Professions Code, when all of the following conditions are met:

(a) The sale is for five or more manufactured homes in a calendar

year.

(b) The manufactured homes are delivered directly to a building site and installed on a foundation system in accordance with Section 18551.

(c) The manufactured homes are installed within a single subdivision, as defined in Section 66424 of the Government Code, consisting of five or more parcels, and therefore require a tentative and final map pursuant to Section 66426 of the Government Code.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 459

An act to amend Section 24105 of the Food and Agricultural Code, relating to animals.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 24105 of the Food and Agricultural Code is amended to read:

24105. No investigator of the program or any other employee of the department, in enforcing this chapter, shall be required to conduct any investigation that involves the theft of any animal. That investigation shall be conducted by the law enforcement entity that filed the theft report. However, an investigator of the program may assist the law enforcement entity that filed the theft report in the theft investigation.

CHAPTER 460

An act to add Section 14132.765 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 14132.765 is added to the Welfare and Institutions Code, to read:

14132.765. (a) No treatment authorization request shall be required for the provision of prosthetic devices or for the replacement or repair of prosthetic devices, if the cost does not exceed five hundred dollars ($500).

(b) No treatment authorization request shall be required for the provision of orthotic devices or for the replacement or repair of orthotic devices, if the cost does not exceed two hundred fifty dollars ($250).

(c) The department shall implement subdivisions (a) and (b) commencing March 1, 1994.

(d) Notwithstanding subdivision (c), the department shall implement subdivisions (a) and (b) only if one of the following occurs:

(1) The report required by Section 14132.76 contains a conclusion that the pilot demonstration program required by that section was cost-effective.

(2) The report required by Section 14132.76 is not submitted to the appropriate committees of the Legislature by December 31, 1993.

(d) Notwithstanding subdivisions (a) and (b), the director may reinstate the requirement for prior authorization if the director determines that the elimination of the requirement results in unnecessary utilization, after notice to the Joint Legislative Budget Committee 30 days prior to the reinstatement of the requirement for prior authorization.

CHAPTER 461

An act to amend Section 12201 of the Penal Code, relating to firearms.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 12201 of the Penal Code is amended to read:

12201. Nothing in this chapter shall prohibit the sale to, purchase by, or possession of machineguns by police departments, sheriffs' offices, marshals' offices, district attorneys' offices, the California Highway Patrol, the Department of Justice, the Department of Corrections for use by the department's Special Emergency Response Teams and Law Enforcement Liaison/Investigations Unit, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nothing in this chapter shall prohibit the possession of machineguns by regular, salaried, full-time peace officer members of a police department, sheriff's office, marshal's office, district attorney's office, the California Highway Patrol, the Department of Justice, or the Department of Corrections for use by the department's Special Emergency Response Teams and Law Enforcement Liaison/Investigations Unit when on duty and if the use is within the scope of their duties.

CHAPTER 462

An act to amend Section 551 of the Penal Code, relating to insurance fraud, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 551 of the Penal Code is amended to read:

551. (a) It is unlawful for any automotive repair dealer or its employees or agents to offer to any insurance agent, broker, or adjuster any fee, commission, profit sharing, or other form of direct or indirect consideration for referring an insured to that automotive repair dealer or its employees or agents for vehicle repairs covered under a policyholder's automobile physical damage coverage or automobile collision coverage.

(b) Except in cases in which the amount of the repairs has been determined by the insurer and the repairs are performed in

accordance with that determination or in accordance with provided estimates that are accepted by the insurer, it is unlawful for any automotive repair dealer or its employees or agents to knowingly offer or give any discount intended to offset a deductible required by a policy of insurance covering a motor vehicle for making repairs to the motor vehicle. This subdivision does not prohibit an advertisement for repair services at a discount as long as the amount of the repairs has been determined by the insurer and the repairs are performed in accordance with that determination or in accordance with provided estimates that are accepted by the insurer.

(c) A violation of this section is a public offense. Where the amount at issue exceeds four hundred dollars ($400), the offense is punishable by imprisonment in the state prison for 16 months, or 2 or 3 years, by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not to exceed one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine. In all other cases, the offense is punishable by imprisonment in a county jail not to exceed six months, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) Every person who, having been convicted of subdivision (a) or (b) or former Section 9884.75 of the Business and Professions Code and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of subdivision (a) or (b), upon a subsequent conviction of one of those offenses, shall be punished by imprisonment in the state prison for 16 months, or 2 or 3 years, by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not to exceed one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(e) For purposes of this section, "automotive repair dealer" means a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles.

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

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

In order to insure that unintended persons are not prosecuted

under provisions designed to punish insurance fraud, it is necessary that this act take effect immediately.

CHAPTER 463

An act to amend Sections 69563 and 69567 of the Education Code, relating to postsecondary education.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

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

(a) The California Student Opportunity and Access Program (Cal-SOAP), established in 1978 as a pilot program, is meeting the program's mandate to prepare historically underrepresented high school students for admittance and success in higher education and to reduce the duplication of services to targeted students.

(b) Prior evaluation by the California Postsecondary Education Commission resulted in a recommendation to remove the termination clause and the pilot status and expand the program throughout the state.

(c) In 1990, the Legislature identified the Cal-SOAP as a program that has contributed significantly to increasing the participation and success of historically underrepresented students in higher education and directed the Student Aid Commission to develop a five-year plan to expand the program statewide.

(d) The California Postsecondary Education Commission's 1992 study and evaluation recommended that the Cal-SOAP be continued as an effective outreach program.

(e) The per-pupil cost to the state is one of the lowest for existing outreach programs, with the projects greatly exceeding the requirement to match state funds with contributions of local resources.

(f) Through coordination and cooperation of the various entities within the consortia—the universities, community colleges, private vocational schools, secondary schools, and nonprofit community organizations—duplication of outreach activities is avoided, the program is able to serve areas otherwise impossible to serve, and new services can be developed to meet local needs.

(g) In the event that California is selected to participate in the National Early Intervention Scholarship and Partnership Program, recently authorized in the federal Higher Education Amendments of 1992, the Cal-SOAP could serve as a vehicle for effective utilization of federal funds.

SEC. 2. Section 69563 of the Education Code is amended to read:

69563. The California Postsecondary Education Commission shall periodically review and evaluate the Student Opportunity and Access Program as part of the commission's regular assessment of outreach programs in the state. The commission shall include in the evaluation an assessment of the admission, progress, retention, and graduation of program participants from postsecondary institutions.

SEC. 3. Section 69567 of the Education Code is amended to read:

69567. This article shall become inoperative on June 30, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 464

An act to add Sections 1618.5 and 1685 to the Business and Professions Code, and to amend Section 1380 of the Health and Safety Code, relating to dentistry.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 1618.5 is added to the Business and Professions Code, to read:

1618.5. (a) The board shall provide to the Commissioner of Corporations a copy of any accusation filed with the Office of Administrative Hearings pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, when the accusation is filed, for a violation of this chapter relating to the quality of care of any dental provider of a health care service plan, as defined in Section 1345 of the Health and Safety Code. There shall be no liability on the part of, and no cause of action shall arise against, the State of California, the Board of Dental Examiners, the Department of Corporations, the Commissioner of Corporations, or any officer, agent, employee, consultant, or contractor of the state or the board or the department for the release of any false or unauthorized information pursuant to this section, unless the release is made with knowledge and malice.

(b) The board and its executive officer and staff shall maintain the confidentiality of any nonpublic reports provided by the Commissioner of Corporations pursuant to subdivision (i) of Section 1380 of the Health and Safety Code.

SEC. 2. Section 1685 is added to the Business and Professions Code, to read:

1685. In addition to other acts constituting unprofessional conduct under this chapter, it is unprofessional conduct for a person licensed under this chapter to require, either directly or through an

office policy, or knowingly permit the delivery of dental care that discourages necessary treatment or permits clearly excessive treatment, incompetent treatment, grossly negligent treatment, repeated negligent acts, or unnecessary treatment, as determined by the standard of practice in the community.

SEC. 3. Section 1380 of the Health and Safety Code is amended to read:

1380. (a) The department shall conduct periodically an onsite medical survey of the health delivery system of each plan. The survey shall include a review of the procedures for obtaining health services, the procedures for regulating utilization, peer review mechanisms, internal procedures for assuring quality of care, and the overall performance of the plan in providing health care benefits and meeting the health needs of the subscribers and enrollees.

(b) The survey shall be conducted by a panel of qualified health professionals experienced in evaluating the delivery of prepaid health care. The department shall be authorized to contract with professional organizations or outside personnel to conduct medical surveys. These organizations or personnel shall have demonstrated the ability to objectively evaluate the delivery of health care by plans or health maintenance organizations.

(c) Surveys performed by this section shall be conducted as often as deemed necessary by the commissioner to assure the protection of subscribers and enrollees, but not less frequently than once every five years. Nothing in this section shall be construed to require the survey team to visit each clinic, hospital office, or facility of the plan. To avoid duplication, the commissioner shall employ, but is not bound by, the following:

(1) In hospital-based health care service plans, to the extent necessary to satisfy the requirements of this section, the findings of inspections conducted pursuant to Section 1279.

(2) In health care service plans contracting with the State Department of Health Services pursuant to the Waxman-Duffy Prepaid Health Plan Act, the findings of reviews conducted pursuant to Section 14456 of the Welfare and Institutions Code.

(3) To the extent feasible, reviews of providers conducted by professional standards review organizations.

(d) Nothing in this section shall be construed to require the medical survey team to review peer review proceedings and records conducted and compiled under Section 1370 or medical records. However, the commissioner shall be authorized to require onsite review of these peer review proceedings and records or medical records where necessary to determine that quality health care is being delivered to subscribers and enrollees. Where medical record review is authorized, the survey team shall insure that the confidentiality of physician-patient relationship is safeguarded in accordance with existing law and neither the survey team nor the commissioner or the commissioner's staff may be compelled to disclose this information except in accordance with the

physician-patient relationship. The commissioner shall ensure that the confidentiality of the peer review proceedings and records is maintained. The disclosure of the peer review proceedings and records to the commissioner or the medical survey team shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to Sections 1370 and 1370.1.

(e) The procedures and standards utilized by the survey team shall be made available to the plans prior to the conducting of medical surveys.

(f) During the survey the members of the survey team shall offer such advice and assistance to the plan as deemed appropriate.

(g) The commissioner shall notify the plan of deficiencies found by the survey team. The commissioner shall give the plan a reasonable time to correct the deficiencies and failure on the part of the plan to comply to the commissioner's satisfaction shall constitute cause for disciplinary action against the plan.

(h) Reports of all surveys, deficiencies, and correction plans shall be open to public inspection except that no surveys, deficiencies, or correction plans shall be made public unless the plan has had an opportunity to review the survey and file a statement or response within 30 days, to be attached to the report. Deficiencies shall not be made public if they are corrected within 30 days of the date that the plan was notified.

(i) Notwithstanding subdivision (h), the commissioner shall provide to the plan and to the executive officer of the Board of Dental Examiners a copy of information relating to the quality of care of any licensed dental provider contained in any report described in subdivision (h) that, in the judgment of the commissioner, indicates clearly excessive treatment, incompetent treatment, grossly negligent treatment, repeated negligent acts, or unnecessary treatment. The information provided by the commissioner shall not be made public pursuant to this subdivision. Notwithstanding any other provision of law, the disclosure of this information to the plan and to the executive officer shall not operate as a waiver of confidentiality. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the Department of Corporations, the Commissioner of Corporations, the Board of Dental Examiners, or any officer, agent, employee, consultant, or contractor of the state or the department or the board for the release of any false or unauthorized information pursuant to this section, unless the release of that information is made with knowledge and malice.

(j) Nothing in this section shall be construed as affecting the commissioner's authority pursuant to Article 7 (commencing with Section 1386) or Article 8 (commencing with Section 1390) of this chapter.

CHAPTER 465

An act to amend Section 25537 of, and to add and repeal Section 25537.1 of, the Government Code, relating to county property.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 25537 of the Government Code is amended to read:

25537. (a) In any county the board of supervisors may prescribe by ordinance a procedure alternative to that required by Sections 25526 to 25535, inclusive, for the leasing of any real property belonging to, or leased by, the county. Any alternative procedure so prescribed shall require that the board of supervisors either accept the highest proposal for the proposed lease submitted in response to a call for bids posted in at least three public places for not less than 15 days and published for not less than two weeks in a newspaper of general circulation, if the newspaper is published in the county, or reject all bids.

(b) Leases of a duration not exceeding 10 years and having an estimated monthly rental of not exceeding five thousand dollars ($5,000) may be excluded from the bidding procedure specified in subdivision (a), except that notice shall be given pursuant to Section 6061, posted in the office of the county clerk, and if the lease involves residential property, notice shall be given to the housing sponsors, as defined by Sections 50074 and 50074.5 of the Health and Safety Code. The notice shall describe the property proposed to be leased, the terms of the lease, the location where offers to lease the property will be accepted, the location where leases will be executed, and any county officer authorized to execute the lease. If a lease is excluded from the bidding procedure the actual monthly rental in the executed lease shall not exceed five thousand dollars ($5,000), the term of the executed lease shall not exceed 10 years, and the lease is not renewable. The board of supervisors may, by resolution, authorize the county officer or officers as are deemed appropriate, to execute leases pursuant to this section.

(c) Notice pursuant to this section shall also be mailed or delivered at least 15 days prior to accepting offers to lease pursuant to this section to any person who has filed a written request for notice with either the clerk of the board or with any other person designated by the board to receive these requests. The county may charge a fee which is reasonably related to the costs of providing this service and the county may require each request to be annually renewed. The notice shall describe the property proposed to be leased, the terms of the lease, the location where offers to lease the property will be accepted, the location where leases will be

executed, and any county officer authorized to execute the lease.

SEC. 2. Section 25537.1 is added to the Government Code, to read:

25537.1. (a) Notwithstanding Sections 25526, 25535, and 25537, commercial and industrial buildings owned by, or leased to, the county may be leased for a term not exceeding 10 years and having an estimated monthly rental of not exceeding ten thousand dollars ($10,000). Leases executed under this section may provide that subsequent to execution of a lease, annual increases in monthly rent that result in a monthly rent above ten thousand dollars ($10,000) are permitted if those increases are proportional to changes in the Consumer Price Index as published by the United States Department of Labor, Bureau of Labor Statistics.

(b) (1) Notice shall be mailed or delivered at least 15 days prior to accepting offers to lease pursuant to this section to any person who has filed a written request for notice with either the clerk of the board or with any other person designated by the board to receive these requests. The county may charge a fee which is reasonably related to the costs of providing this service and the county may require each request to be annually renewed. The notice shall describe the property proposed to be leased, the terms of the lease, the location where offers to lease the property will be accepted, the location where leases will be executed, and any county officer authorized to execute the lease.

(2) Before any proposed lease may be entered into pursuant to this section, notice shall be given pursuant to Section 6061.3. The notice shall describe the property proposed to be leased, the terms of the lease, the location where offers to lease the property will be accepted, the location where leases will be executed, and any county officer authorized to execute the lease.

(c) Any sublease shall not conflict with the terms of an original lease.

(d) The board of supervisors may, by resolution, authorize a county officer or officers as are deemed appropriate, to execute leases pursuant to this section.

(e) This section shall become inoperative on July 1, 1999, and as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes operative and is repealed. However, the provisions of leases executed pursuant to this section shall remain in effect for the duration of the lease as if this section were still in effect.

CHAPTER 466

An act to amend Sections 19991.1, 19991.2, 19991.4, 19991.8, and 19991.9 of, and to add Section 19143 to, the Government Code, relating to state employees.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 19143 is added to the Government Code, to read:

19143. At the termination of any temporary separation, except termination of a permanent or probationary employee by layoff and termination by displacement, as defined in board regulation, the employee shall be reinstated to his or her former position, as defined in Section 18522, unless some other reinstatement right is specified for the particular temporary separation in the Civil Service Act or board regulation.

SEC. 2. Section 19991.1 of the Government Code is amended to read:

19991.1. (a) Subject to department rule an appointing power may grant a leave of absence without pay, to any employee under his or her jurisdiction for a period not exceeding one year. An extension to an unpaid leave of absence may be granted by the appointing power upon the prior approval of the department. A leave so granted assures to the employee the right to return under the provisions of Section 19143.

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

SEC. 3. Section 19991.2 of the Government Code is amended to read:

19991.2. (a) The appointing power may grant to an employee under his or her jurisdiction who has permanent civil service status or a probationer who immediately preceding his or her appointment to his or her position held permanent civil service status in the same or some other class a leave of absence without pay for not to exceed two years for service in a technical cooperation program as a temporary employee of another governmental agency, a nonprofit organization, or a recognized college or university upon the request of the agency. Within three months of termination of this service, the employee shall be reinstated to his or her former position pursuant to Section 19143.

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

SEC. 4. Section 19991.4 of the Government Code is amended to read:

19991.4. Any period of time during which an employee is required to be absent from his or her position by reason of an injury or disease for which he or she is entitled to receive temporary disability compensation under the provisions of Division 4 or 4.5 of the Labor Code is not a break in his or her continuous service for the purpose of his or her right to salary adjustments, sick leave, vacation, annual leave, or seniority.

If an employee is unable to return to work at the time or during the period he or she is entitled to permanent disability compensation under Division 4 or 4.5 of the Labor Code, he or she shall be paid any sick leave balance, vacation balance, annual leave balance, or accumulated compensable overtime. The payment shall be computed by projecting the accumulated time on a calendar basis as though the employee was taking time off. If during the period of projection the employee is able to return to work, he or she shall be returned to his or her former position as defined in Section 18522.

If a permanent or probationary employee is still not able to return to his or her former position and continues to receive permanent disability compensation, the appointing power shall take at least one of the actions described in Section 19253.5 or grant a leave of absence for the period during which the employee receives permanent disability compensation or is being retrained through rehabilitation.

If the employee is demoted or transferred pursuant to Section 19253.5 he or she shall receive the maximum of the salary range provided that salary is not greater than the salary he or she received on the date his or her accumulated time was exhausted.

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

SEC. 5. Section 19991.8 of the Government Code is amended to read:

19991.8. During any state military emergency and subject to department rule, an appointing power may grant a leave of absence without pay to a permanent or probationary employee under his or her jurisdiction to:

(a) Engage in civilian warwork pursuant to mandatory order of

the agency of the United States or of the state having authority to make that order.

(b) Assume active duty in the United States merchant marine.

(c) Assume other duty rather than active duty to fulfill a military obligation pursuant to mandatory order of the agency of the United States or of the state having authority to make such order.

(d) Assume active full-time duty for the American Red Cross.

Such a leave shall not exceed the period authorized in the order.

Such a leave assures to the employee reinstatement pursuant to Section 19143.

SEC. 6. Section 19991.9 of the Government Code is amended to read:

19991.9. Any permanent state civil service employee or an employee serving under another appointment who previously had permanent status and who, since that permanent status, has had no break in the continuity of his or her state service, who served in the armed forces, and who is eligible because of that service for education or training under applicable state or federal law shall upon application to his or her appointing power be granted an educational leave of absence without pay for the period during which he or she receives that education or training and for three months thereafter. In order for that leave to be granted or to remain in effect, the employee must enroll for a minimum of 10 credit hours of post-high-school grade or the equivalent amount of work on high school level each school year. No such leave shall remain in effect for longer than four years and three months of school attendance. A leave so granted assures to the employee a right of return pursuant to Section 19143.

CHAPTER 467

An act to amend Section 18165 of the Financial Code, relating to industrial loan companies.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 18165 of the Financial Code is amended to read:

18165. (a) An industrial loan company shall not transact business or make any loan provided for by this division at any other place of business than that designated in its certificate of authorization issued pursuant to Section 18101 or 18149, without having obtained the prior written approval of the commissioner.

(b) An industrial loan company may solicit and make loans and acquire obligations at a place of business other than designated in its

certificate of authorization upon written request to and written approval of the commissioner, without obtaining a certificate of authorization to conduct business at a branch office pursuant to Article 4 (commencing with Section 18145), subject to the provisions of subdivision (d). The written request for approval to conduct business shall be accompanied by a processing fee of two hundred dollars ($200) for each place of business and shall include the following:

(1) The proposed location of the place of business.

(2) A description of the industrial loan company's proposed plan of business, including a description of the manner and extent to which the industrial loan company proposes to direct and supervise the place of business.

(3) The character, business qualifications, and other experience of the proposed officers and managers directing the line of business for which authorization is requested.

(4) If the place of business is to be located outside of this state, a description of the regulation of the place of business by the state of the United States where the place of business is proposed to be located, including:

(A) A summary of the laws, administrative policies, and rules or regulations of the state relating to the proposed establishment and operation of the place of business.

(B) The name, address, and telephone number of the state agency having jurisdiction over the proposed establishment and operation of the place of business.

(C) A description of the extent and manner in which the establishment and operation of the place of business will be regulated by the state agency.

(D) Whether or not any law, administrative policy, or rule or regulation of the state of the United States where the place of business is proposed to be located would prohibit the commissioner from, or restrict the commissioner in, examining or regulating the place of business, and, if so, a citation to and summary of the law, administrative policy, rule, or regulation.

(5) Any other information bearing on the proposal that, in the opinion of the commissioner, may be relevant.

(c) The commissioner shall approve the request made pursuant to subdivision (b) within 30 days after filing unless the commissioner has ascertained that the company has failed to show any of the following:

(1) Compliance with all applicable requirements of subdivision (b).

(2) That the proposed plan of business would not violate any of the laws or the regulations of the state in which the office is proposed to conduct its business.

(3) That the company has adequate internal controls to manage the conduct of the business proposed to be conducted.

(4) That the company has a person with the necessary business

qualifications, experience, or ability to direct and manage the operations of the proposed plan of business.

(d) An industrial loan company that has been approved by the commissioner pursuant to subdivision (b) to solicit and make loans and acquire obligations at a place of business other than designated in its certificate of authorization shall comply with the following:

(1) No investment certificates shall be solicited, offered, or sold at the place of business.

(2) Loan files for loans originating at the place of business shall be retained at the main or licensed branch location of the industrial loan company, and all loans originating at the place of business shall be coded in a manner so as to easily identify that place of business.

(3) The place of business shall not be identified in any manner as a branch location or as a licensed location of the industrial loan company.

(4) If the place of business is outside of this state, the industrial loan company shall, not less than five business days before commencing business at that place of business, file with the commissioner a report stating that the industrial loan company has complied with all laws of that state applicable to the establishment and operation of the place of business, and which contains a copy of any document issued by the state agency having jurisdiction over the proposed establishment and operation of the place of business authorizing the industrial loan company to establish the place of business.

(5) All books, accounts, papers, records, and files of the place of business shall, upon request, be made available to the commissioner or the commissioner's representatives in this state within the time specified in the request.

(6) Any other conditions and limitations the commissioner may require.

(e) An industrial loan company that opens a place of business for which approval is required under subdivision (b) without first obtaining the commissioner's written approval shall be liable for a civil penalty of one hundred dollars ($100) for every day during which the place of business is maintained without approval.

(f) The commissioner may by rule, order, or regulation permit loans to be made or entered into and loans and obligations solicited and acquired at places other than designated by an industrial loan company in its certificate of authorization if such loans can be so made consistent with the purposes of the Industrial Loan Law.

CHAPTER 468

An act to amend Section 22114 of the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 22114 of the Education Code is amended to read:

22114. (a) "Compensation" and "salary," for purposes of determining benefits and contributions, mean:

(1) Remuneration in cash payable by the employer to the member for actual work performed or time served, up to the full-time equivalent for the position.

(2) Any member contributions paid by the employer pursuant to Section 23000.1 or 23000.5.

(3) Any amount deducted from the member's salary for participation in a deferred compensation plan, or for purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 125, 401(k), or 403(b)).

(4) Moneys derived from a salary schedule based on years of training and years of experience, as specified in Section 45028.

(5) Any other payments the board may determine to be "compensation" and "salary."

(b) "Compensation" and "salary," for purposes of determining benefits and contributions, do not mean, and shall not include, any of the following:

(1) Money paid, allocated, or reimbursed for job-related expenses.

(2) Money paid to a member for overtime service.

(3) Compensatory damages or money paid to a member in excess of regular salary as a compromise settlement or as severance pay.

(4) Payments for unused accumulated leave.

(5) Money paid for summer school employment.

(6) Money paid as a bonus. For purposes of this part, a bonus is a payment made only to a selected employee or employees and not to the entire class of employees on a systematic basis.

(7) Fringe benefits paid for by the employer in lieu of salary.

(8) Money not available for payment of salaries and that is paid by the employer for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 125, 401(k), or 403(b)).

(9) Money paid as a stipend to mentor teachers pursuant to

subdivision (a) of Section 44494.

(10) Any other payments the board may determine not to be "compensation" and "salary."

(c) Any moneys paid under paragraphs (1) to (10), inclusive, of subdivision (b), shall not be included as a part of the member's compensation subject to contributions to the system.

(d) The system may establish procedures to ensure that information reported by employers is in compliance with this section.

(e) The Legislature finds and declares that any person who willfully reports compensation in a manner inconsistent with the definitions set forth in this section may be subject to prosecution for fraud, theft, or embezzlement under the Penal Code.

(f) No payment made to a member shall be considered to be creditable for retirement purposes if, in the opinion of the board, the payment was made with the purpose of increasing retirement benefits for the member, unless it is the result of a specific statutory benefit provision and the amount of the present value of the increase has been paid to the system.

(g) The provisions of this section are designed to treat compensation for retirement purposes of members of the State Teachers' Retirement System according to sound funding principles that support the integrity of the fund. Some of the basic funding principles supporting the integrity of the Teachers' Retirement Fund include consistent treatment of compensation throughout the career of the individual member and consistent treatment of compensation for an entire classification of employees. Ad hoc adjustments to compensation should not be made when the purpose is to enhance retirement benefits, because those adjustments allow unwarranted and unearned increases in retirement benefits, allow adverse selection, and undermine the fiscal integrity of the Teachers' Retirement Fund.

CHAPTER 469

An act to amend Sections 25212, 25232, 29544, 29550, and 29572 of, and to add Sections 25212.1, 25232.3, and 25247 to, the Corporations Code, to amend and repeal Section 10005 of the Financial Code, and to amend Section 6254.5 of, and to add Section 6254.12 to, the Government Code, relating to financial transactions.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 25212 of the Corporations Code is amended to read:

25212. The commissioner may, after appropriate notice and opportunity for hearing, by order censure, deny a certificate to, suspend for a period not exceeding 12 months or revoke the certificate of, any broker-dealer if the commissioner finds that the censure, denial, suspension, or revocation is in the public interest and that the broker-dealer, whether prior or subsequent to becoming a broker-dealer, or any partner, officer, director, or branch manager of the broker-dealer, whether prior or subsequent to becoming associated with the broker-dealer, or any person directly or indirectly controlling the broker-dealer, whether prior or subsequent to becoming such, or any agent employed by the broker-dealer while so employed has done any of the following:

(a) Has willfully made or caused to be made in any application for a certificate or in any report required to be filed with the commissioner under this law, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in the application or report any material fact which is required to be stated therein.

(b) Has been either (1) convicted of or has pled nolo contendere to a felony or misdemeanor, or (2) held liable in a civil action by final judgment of a court based upon conduct showing moral turpitude, and the commissioner finds that the felony, misdemeanor, or civil action (A) involved the purchase or sale of any security, (B) arose out of the conduct of the business of a broker-dealer or investment adviser, (C) involved theft, or (D) involved the violation of Section 1341, 1342 or 1343 of Title 18 of the United States Code.

(c) Is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, or broker-dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with that activity or in connection with the purchase or sale of any security.

(d) Is or has been subject to (1) any order of the Securities and Exchange Commission or the securities administrator of any other state denying registration to, or revoking or suspending the registration of, the person as a broker, dealer, agent, or investment adviser, (2) any order of any national securities association or national securities exchange (registered under the Securities Exchange Act of 1934) suspending or expelling that person from membership in the association or exchange or from association with any member thereof, or (3) any other order of the commission or any administrator, association, or exchange referred to in this subdivision which is or has been necessary for the protection of any investor.

(e) Has willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity

Exchange Act, or Title 4 (commencing with Section 25000), including the Franchise Investment Law, Division 5 (commencing with Section 31000), or the California Commodity Law of 1990, Division 4.5 (commencing with Section 29500), or of any rule or regulation under any of those statutes, or any order of the commissioner which is or has been necessary for the protection of any investor.

(f) Is or has been subject to (1) any order of the Commodity Futures Trading Commission denying registration to, or revoking or suspending the registration of, that person under the Commodity Exchange Act, (2) any order of any board of trade or commodity exchange, including, but not limited to, the New York Mercantile Exchange, the Chicago Mercantile Exchange, the Chicago Board of Trade, or the Chicago Board Options Exchange, suspending or expelling that person from membership in the board of trade or commodity exchange or from association with any member thereof, or (3) any other order of the commission or any board or exchange referred to in this subdivision which is or has been necessary for the protection of any investor.

(g) Has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any of the statutes or rules or regulations referred to in subdivision (e) above, or has failed reasonably to supervise, with a view to preventing violations of those statutes, rules and regulations, another person who commits a violation, if the other person is subject to his or her supervision; for the purposes of this subdivision, no person shall be deemed to have failed reasonably to supervise any person if (1) there have been established procedures, and a system for applying those procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any violation by the other person, and (2) that person has reasonably discharged the duties and obligations incumbent upon him or her by reason of those procedures and system without reasonable cause to believe that those procedures and system were not being complied with.

(h) Is subject to any currently effective order of the commissioner entered pursuant to Section 25213 revoking or suspending the certificate of the person as an agent.

SEC. 2. Section 25212.1 is added to the Corporations Code, to read:

25212.1. The commissioner may immediately revoke the certificate of any broker-dealer if the broker-dealer fails to comply with any currently effective order of the commissioner which is necessary for the protection of any investor, unless the broker-dealer secures a court order restraining the enforcement of the commissioner's order within 10 days of the date the order is issued.

SEC. 3. Section 25232 of the Corporations Code is amended to read:

25232. The commissioner may, after appropriate notice and opportunity for hearing, by order censure, deny a certificate to, or

suspend for a period not exceeding 12 months or revoke the certificate of, an investment adviser, if the commissioner finds that the censure, denial, suspension, or revocation is in the public interest and that the investment adviser, whether prior or subsequent to becoming such, or any partner, officer or director thereof or any person performing similar functions or any person directly or indirectly controlling the investment adviser, whether prior or subsequent to becoming such, or any employee of the investment adviser while so employed:

(a) Has willfully made or caused to be made in any application for a certificate or any report filed with the commissioner under this division, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in the application or report any material fact which is required to be stated therein; or

(b) Has been either (1) convicted of or has pled nolo contendere to any felony or misdemeanor, or (2) held liable in a civil action by final judgment of a court based upon conduct showing moral turpitude, and the commissioner finds that the felony, misdemeanor or civil action (i) involved the purchase or sale of any security, (ii) arose out of the conduct of the business of a broker-dealer or investment adviser, (iii) involved theft, or (iv) involved the violation of Section 1341, 1342 or 1343 of Title 18 of the United States Code; or

(c) Is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter or broker-dealer or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with that activity, or in connection with the purchase or sale of any security; or

(d) Is or has been subject to (1) any order of the Securities and Exchange Commission or the securities administrator of any other state denying or revoking or suspending his or her registration as an investment adviser, or investment adviser representative, or as a broker or dealer or agent, (2) any order of any national securities association or national securities exchange (registered under the Securities Exchange Act of 1934) suspending or expelling him or her from membership in that association or exchange or from association with any member thereof, or (3) any other order of the commission or any administrator, association, or exchange referred to in this subdivision which is or has been necessary for the protection of any investor; or

(e) Has willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or Title 4 (commencing with Section 25000), including the Franchise Investment Law, Division 5 (commencing with Section 31000), or the California Commodity Law of 1990,

Division 4.5 (commencing with Section 29500), or of any rule or regulation under any of those statutes, or any order of the commissioner which is or has been necessary for the protection of any investor; or

(f) Is or has been subject to (1) any order of the Commodity Futures Trading Commission denying registration to, or revoking or suspending the registration of, that person under the Commodity Exchange Act, (2) any order of any board of trade or commodity exchange, including, but not limited to, the New York Mercantile Exchange, the Chicago Mercantile Exchange, the Chicago Board of Trade, or the Chicago Board Options Exchange, suspending or expelling that person from membership in the board of trade or commodity exchange or from association with any member thereof, or (3) any other order of the commission or any board or exchange referred to in this subdivision which is or has been necessary for the protection of any investor; or

(g) Has aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any statute or rule or regulation referred to in subdivision (e).

SEC. 4. Section 25232.3 is added to the Corporations Code, to read:

25232.3. The commissioner may immediately revoke the certificate of any investment adviser if the investment adviser fails to comply with any currently effective order of the commissioner which is necessary for the protection of any investor, unless the investment adviser secures a court order restraining the enforcement of the commissioner's order within 10 days of the date the order is issued.

SEC. 5. Section 25247 is added to the Corporations Code, to read:

25247. (a) Upon written or oral request, the commissioner shall make available to any person the information specified in Section 6254.12 of the Government Code with respect to any broker-dealer or agent licensed or regulated under this part. The commissioner shall also make available the current license status and the year of issuance of the license of a broker-dealer. Any information disclosed pursuant to this subdivision shall constitute a public record. Notwithstanding any other provisions of law, the commissioner may disclose either orally or in writing that information pursuant to this subdivision. There shall be no liability on the part of and no cause of action of any nature shall arise against the State of California, the Department of Corporations, the Commissioner of Corporations, or any officer, agent, or employee of the state or of the Department of Corporations for the release of any false or unauthorized information, unless the release of that information was done with knowledge and malice.

(b) Any broker-dealer or agent licensed or regulated under this part shall upon request deliver a written notice to any client when a new account is opened stating that information about the licensure status or disciplinary record of a broker-dealer or an agent may be

obtained from the Department of Corporations, or from any other source that provides substantially similar information.

(c) The notice provided under subdivision (b) shall contain the office location or telephone number where the information may be obtained.

(d) A broker-dealer or agent shall be exempt from providing the notice required under subdivision (b) if a person who does not have a financial relationship with the broker-dealer or agent, requests only general operational information such as the nature of the broker-dealer's or agent's business, office location, hours of operation, basic services, and fees, but does not solicit advice regarding investments or other services offered.

SEC. 6. Section 29544 of the Corporations Code is amended to read:

29544. (a) Any person who willfully violates any provision of this law, or who willfully violates any rule or order under this law, shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

The penalty collected shall be paid to the State Corporations Fund to be used for the support of this division. The fees collected by the commissioner under subdivision (a) of Section 29570 shall be reduced by the amount available for appropriation from the penalties collected under this section and paid to the State Corporations Fund.

(b) As applied to the penalties for acts in violation of this division, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce this division.

(c) No action shall be maintained to enforce any liability created under subdivision (a) unless brought before the expiration of four years after the act or transaction constituting the violation.

SEC. 7. Section 29550 of the Corporations Code is amended to read:

29550. (a) Except as provided in subdivision (b), any person who willfully violates any provision of this law, or who willfully violates any rule or order under this law, shall upon conviction be fined not more than two hundred fifty thousand dollars ($250,000) or imprisoned in the state prison or in a county jail for not more than one year, or be punished by both a fine and imprisonment; but no person may be imprisoned for the violation of any rule or order if that person proves that he or she had no knowledge of the rule or order.

(b) Any person who willfully violates Section 29536 shall upon conviction be fined not more than two hundred fifty thousand dollars ($250,000), or imprisoned in the state prison for two, three, or four years, or be punished by both a fine and imprisonment.

(c) One-half of the fines collected under this section shall be paid

to the State Corporations Fund to be used for the support of this division. The remainder of the fines collected under this section shall be paid to the state or local agency which brought the criminal prosecution. The fees collected by the commissioner under subdivision (a) of Section 29570 shall be reduced by the amount available for appropriation from the fines collected under this section and paid to the State Corporations Fund.

SEC. 8. Section 29572 of the Corporations Code is amended to read:

29572. All fees collected by the Commissioner of Corporations under Sections 29570 and 29571 shall be deposited into the State Corporations Fund for the support of the program established by this division, and shall be available for expenditure when appropriated by the Legislature.

SEC. 9. Section 10005 of the Financial Code, as amended by Section 3 of Chapter 1206 of the Statutes of 1991, is amended to read:

10005. For the purposes of this article and any other law of this state prohibiting, limiting, or regulating the doing of business or the selling, taking, or solicitation of savings accounts in this state by foreign savings associations or foreign corporations, any federally insured foreign savings association subject to state or federal supervision, which by law is subject to periodic examination by that supervisory authority and to a requirement of periodic audit, and any broker-dealer registered in accordance with the requirements of the Securities Exchange Act of 1934 and the Corporate Securities Law of 1968, and any partner, officer, director, branch manager, or person performing similar functions, and employees of that broker-dealer, shall not be considered to be doing business or selling, taking, or soliciting savings accounts in this state by reason of engaging in the following:

(a) (1) Any of the activities specified in subdivision (d) of Section 191 of the Corporations Code, or (2) the advertising or solicitation of savings accounts in this state by a federally insured foreign savings association through the media of the mail, radio, television, magazines, newspapers, or any other media that are published or circulated within this state, except through or as a result of telemarketing, provided that the advertising or solicitation as a whole is accurate and does not create a misleading impression even though statements considered separately are literally accurate. A federally insured foreign savings association shall not sell, take or solicit savings accounts through telemarketing by use of the telephone or telephone transceiving equipment, or through the use of an automatic dial-announcing device as defined in Section 2871 of the Public Utilities Code.

(b) The offering by a registered broker-dealer of, or the placement by a registered broker-dealer of a customer's funds into, a savings account at a federally insured foreign savings association chartered under the laws of a state in which broker-dealers make available savings accounts of associations chartered under the laws of

this state, provided that (1) any advertising, offering material, or solicitation as a whole is accurate and does not create a misleading impression even though statements considered separately are literally accurate and (2) the savings accounts of the federally insured foreign savings association are rated "investment grade" by either Standard & Poor's Corporation or Moody's Investors Service, Inc. based upon the foreign savings association's ability to repay the savings accounts independent of federal deposit insurance benefits.

SEC. 10. Section 10005 of the Financial Code, as amended by Section 4 of Chapter 1206 of the Statutes of 1991, is repealed.

SEC. 11. Section 6254.5 of the Government Code is amended to read:

6254.5. Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

(a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.

(b) Made through other legal proceedings.

(c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.

(d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.

(e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.

(f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.

(g) Of records relating to any person that is subject to the jurisdiction of the Department of Corporations, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Corporations.

SEC. 12. Section 6254.12 is added to the Government Code, to read:

6254.12. Any information reported to the North American Securities Administrators Association/National Association of Securities Dealers' Central Registration Depository and compiled as disciplinary records which are made available to the Department of Corporations through a computer system, shall constitute a public record. Notwithstanding any other provision of law, the Department of Corporations may disclose that information and the current license status and the year of issuance of the license of a broker-dealer upon written or oral request pursuant to Section 25247 of the Corporations Code.

CHAPTER 470

An act to add Section 7551.3 to the Public Utilities Code, relating to railroads.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 7551.3 is added to the Public Utilities Code, to read:

7551.3. (a) To ensure that a fair and reasonable price is paid for public acquisition of railroad rights-of-way, it is the intent of the Legislature to have railroad rights-of-way valuation procedures and guidelines developed and adopted for use when state and federal funds are expended.

(b) The Secretary of Business, Transportation, and Housing, in collaboration with other public agencies and within existing resources, shall develop recommended procedures and guidelines for valuation of railroad rights-of-way.

(c) The recommended procedures and guidelines shall be transmitted to the Legislature and Governor on or before March 1, 1994.

CHAPTER 471

An act to amend Section 10160 of the Public Contract Code, relating to state contracts.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 10160 of the Public Contract Code is amended to read:

10160. The department may require from prospective bidders answers to questions contained in a standard form of questionnaire and financial statement including a complete statement of the prospective bidder's financial ability and experience in performing public works. When completed, the questionnaire and financial statement shall be verified under oath by the bidder in the manner in which pleadings in civil actions are verified.

Whenever prequalification is required of any bidder on a contract, it shall be required for all prospective bidders to that contract.

CHAPTER 472

An act to amend Section 84305.5 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

Section 84305.5 of the Government Code is amended to read:

84305.5. (a) No slate mailer organization or committee primarily formed to support or oppose one or more ballot measures shall send a slate mailer unless:

(1) The name, street address, and city of the slate mailer organization or committee primarily formed to support or oppose one or more ballot measures are shown on the outside of each piece of slate mail and on at least one of the inserts included with each piece of slate mail in no less than 8-point roman type which shall be in a color or print which contrasts with the background so as to be easily legible. A post office box may be stated in lieu of a street address if the street address of the slate mailer organization or the committee primarily formed to support or oppose one or more ballot measure is a matter of public record with the Secretary of State's Political Reform Division.

(2) At the top or bottom of the front side or surface of at least one

insert or at the top or bottom of one side or surface of a postcard or other self-mailer, there is a notice in at least 8-point roman boldface type, which shall be in a color or print which contrasts with the background so as to be easily legible, and in a printed or drawn box and set apart from any other printed matter. The notice shall consist of the following statement:

NOTICE TO VOTERS

THIS DOCUMENT WAS PREPARED BY (name of slate mailer organization or committee primarily formed to support or oppose one or more ballot measures), NOT AN OFFICIAL POLITICAL PARTY ORGANIZATION. Appearance in this mailer does not necessarily imply endorsement of others appearing in this mailer, nor does it imply endorsement of, or opposition to, any issues set forth in this mailer. Appearance is paid for and authorized by each candidate and ballot measure which is designated by an *.

(3) The name, street address, and city of the slate mailer organization or committee primarily formed to support or oppose one or more ballot measures as required by paragraph (1) and the notice required by paragraph (2) may appear on the same side or surface of an insert.

(4) Each candidate and each ballot measure that has paid to appear in the slate mailer is designated by an *. Any candidate or ballot measure that has not paid to appear in the slate mailer is not designated by an *.

The * required by this subdivision shall be of the same type size, type style, color or contrast, and legibility as is used for the name of the candidate or the ballot measure name or number and position advocated to which the * designation applies except that in no case shall the * be required to be larger than 10-point boldface type. The designation shall immediately follow the name of the candidate, or the name or number and position advocated on the ballot measure where the designation appears in the slate of candidates and measures. If there is no slate listing, the designation shall appear at least once in at least 8-point boldface type, immediately following the name of the candidate, or the name or number and position advocated on the ballot measure.

(5) The name of any candidate appearing in the slate mailer who is a member of a political party differing from the political party which the mailer appears by representation or indicia to represent is accompanied, immediately below the name, by the party designation of the candidate, in no less than 9-point roman type which shall be in a color or print that contrasts with the background

so as to be easily legible. The designation shall not be required in the case of candidates for nonpartisan office.

(b) For purposes of the designations required by paragraph (4) of subdivision (a), the payment of any sum made reportable by subdivision (c) of Section 84219 by or at the behest of a candidate or committee, whose name or position appears in the mailer, to the slate mailer organization or committee primarily formed to support or oppose one or more ballot measures, shall constitute a payment to appear, requiring the * designation. The payment shall also be deemed to constitute authorization to appear in the mailer.

(c) A slate mailer that complies with this section shall be deemed to satisfy the requirements of Sections 11703 and 11704 of the Elections Code.

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

SEC. 3. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 473

An act to amend Section 436.28 of the Health and Safety Code, relating to health facilities, and making an appropriation therefor.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 436.28 of the Health and Safety Code is amended to read:

436.28. (a) The office's authorization to insure health facility construction, improvement, and expansion loans under this chapter shall be limited to a total of not more than two billion five hundred million dollars ($2,500,000,000). However, when the office completes the state plan as is required by Section 436.4, and the plan is approved by the Governor and submitted to the legislative committees referred to in that section by December 31, 1992, and the plan includes a finding that the limit should be further increased, then the

limit shall be increased on January 1, 1993, from two billion five hundred million dollars ($2,500,000,000) to three billion dollars ($3,000,000,000).

(b) Notwithstanding the limitation in subdivision (a), the office may exceed the specific dollar limitation in either of the following instances:

(1) Refinancing a preexisting loan, if the refinancing results in savings to the health facility and increases the probability that a loan can be repaid.

(2) The need for financing results from earthquakes or other natural disasters.

CHAPTER 474

An act to amend Section 11372.7 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 11372.7 of the Health and Safety Code is amended to read:

11372.7. (a) Except as otherwise provided in subdivision (b) or (e), each person who is convicted of a violation of this chapter shall pay a drug program fee in an amount not to exceed one hundred fifty dollars ($150) for each separate offense. The court shall increase the total fine, if necessary, to include this increment, which shall be in addition to any other penalty prescribed by law.

(b) The court shall determine whether or not the person who is convicted of a violation of this chapter has the ability to pay a drug program fee. If the court determines that the person has the ability to pay, the court may set the amount to be paid and order the person to pay that sum to the county in a manner that the court believes is reasonable and compatible with the person's financial ability. In its determination of whether a person has the ability to pay, the court shall take into account the amount of any fine imposed upon that person and any amount that person has been ordered to pay in restitution. If the court determines that the person does not have the ability to pay a drug program fee, the person shall not be required to pay a drug program fee.

(c) The county treasurer shall maintain a drug program fund. For every drug program fee assessed and collected pursuant to subdivisions (a) and (b), an amount equal to this assessment shall be deposited into the fund for every conviction pursuant to this chapter, in addition to fines, forfeitures, and other moneys which are transmitted by the courts to the county treasurer pursuant to

Sections 11372.5 and 11502. These deposits shall be made prior to any transfer pursuant to Section 11502. Amounts deposited in the drug program fund shall be allocated by the administrator of the county's drug program to drug abuse programs in the schools and the community, subject to the approval of the board of supervisors, as follows:

(1) The moneys in the fund shall be allocated through the planning process established pursuant to Sections 11983, 11983.1, 11983.2, and 11983.3.

(2) A minimum of 33 percent of the fund shall be allocated to primary prevention programs in the schools and the community. Primary prevention programs developed and implemented under this article shall emphasize cooperation in planning and program implementation among schools and community drug abuse agencies, and shall demonstrate coordination through an interagency agreement among county offices of education, school district, and the county drug program administrator. These primary prevention programs may include:

(A) School- and classroom-oriented programs, including, but not limited to, programs designed to encourage sound decisionmaking, an awareness of values, an awareness of drugs and their effects, enhanced self-esteem, social and practical skills that will assist students toward maturity, enhanced or improved school climate and relationships among all school personnel and students, and furtherance of cooperative efforts of school- and community-based personnel.

(B) School- or community-based nonclassroom alternative programs, or both, including, but not limited to, positive peer group programs, programs involving youth and adults in constructive activities designed as alternatives to drug use, and programs for special target groups, such as women, ethnic minorities, and other high-risk, high-need populations.

(C) Family-oriented programs, including, but not limited to, programs aimed at improving family relationships and involving parents constructively in the education and nurturing of their children, as well as in specific activities aimed at preventing drug abuse.

(d) Moneys deposited into a county drug program fund pursuant to this section shall supplement, and shall not supplant, any local funds made available to support the county's drug abuse prevention and treatment efforts.

(e) Five percent of the money allocated to primary prevention programs in schools and communities within the county pursuant to paragraph (2) of subdivision (c) shall be used for the purpose of conducting an annual evaluation. The annual evaluation shall be conducted by the office of the county superintendent of schools in counties where the program is operating in a single county or in the office of the county superintendent of schools in the county designated as the lead county in counties where the program is

operating as a consortium of counties. The evaluation shall contain the following:

(1) A needs assessment evaluation which provides specific data regarding the problem to be resolved.

(2) A written report of the planning process outlining the deliberations, considerations, and conclusions following a review of the needs assessment.

(3) An end of fiscal year accountability evaluation that will indicate the program's continuing ability to reach appropriate program beneficiaries, deliver the appropriate benefits, and use funds appropriately.

(4) An impact evaluation charged with the task of assessing the effectiveness of the program. Guidelines for the evaluation report format and the timeliness for the submission of the report shall be developed by the State Department of Education. Each county shall submit an evaluation report annually to the State Department of Education and the State Department of Education shall write and submit a report to the Legislature and Governor.

(f) This section shall not apply to any person convicted of a violation of subdivision (b) of Section 11357 of the Health and Safety Code.

CHAPTER 475

An act to amend Sections 1550.5 and 1596.803 of the Health and Safety Code, relating to community care facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 1550.5 of the Health and Safety Code is amended to read:

1550.5. The director may temporarily suspend any license prior to any hearing when, in the opinion of the director, the action is necessary to protect residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall serve the licensee with the temporary suspension and the effective date of the temporary suspension and at the same time shall serve the licensee with an accusation.

(a) (1) The department shall notify the licensee, upon service of an order of temporary license suspension, of the licensee's right to an interim hearing on the order. The department shall also provide the licensee with a form and appropriate information for the licensee's use in requesting an interim hearing. The department shall

also notify the licensee, upon service, of the licensee's independent right to seek review of the order by the superior court pursuant to Section 1085 of the Code of Civil Procedure on the issue of whether the department abused its discretion in issuing the order.

(2) (A) The licensee may request an interim hearing by mailing or delivering a written request to the Office of Administrative Hearings. The licensee shall mail or deliver the request to the address or location specified on the request form served with the order. The licensee shall mail or deliver the request within five days after service of the order. Upon receipt of a timely request for an interim hearing, the Office of Administrative Hearings shall set a hearing date and time which shall be within 10 working days of the office's receipt of the request. The Office of Administrative Hearings shall promptly notify the licensee of the date, time, and place of the hearing. The Office of Administrative Hearings, upon setting the interim hearing, shall post a public notice of the hearing at its regional office having jurisdiction over the location of the facility. The licensee's request for an interim hearing shall not stay the operation of the order.

(B) Nothing in this section precludes a licensee from proceeding directly to a full evidentiary hearing.

(3) (A) An interim hearing shall be held before an administrative law judge of the Office of Administrative Hearings. The interim hearing shall be held at the regional office of the Office of Administrative Hearings having jurisdiction over the location of the facility.

(B) The interim hearing on the order shall be limited to the issue of whether the department abused its discretion under this section in issuing the order. Evidence at the interim hearing shall be limited to the department's accusation and order of temporary license suspension. The interim hearing shall be reported or recorded pursuant to subdivision (d) of Section 11512 of the Government Code.

(4) The administrative law judge shall issue a verbal interim decision at the conclusion of the interim hearing which sustains or vacates the order. The administrative law judge shall issue a written interim decision within one working day following the conclusion of the interim hearing. The written interim decision shall be limited in scope to sustaining or vacating the order.

(5) The interim decision shall be subject to review only pursuant to Section 1094.5 of the Code of Civil Procedure. The department or the licensee may file a petition for that review. A petition for review under Section 1094.5 of the Code of Civil Procedure shall be heard by the court within 10 days of its filing and the court shall issue its judgment on the petition within 10 days of the conclusion of the hearing. The hearing on the interim decision shall be limited to the issue of whether the department abused its discretion under this section in issuing the order of temporary license suspension.

(6) The department may proceed with the accusation as

otherwise provided by this section and Section 1551 notwithstanding an interim decision by the administrative law judge which vacates the order of temporary license suspension.

(7) The department shall be deemed to have abused its discretion in issuing an order of temporary license suspension only if the department's accusation and order of temporary license suspension fail to allege facts and conditions showing that issuance of the order is necessary to protect residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety.

(b) Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for a full evidentiary hearing, and the hearing shall be held as soon as possible but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until the time the hearing is completed and the director has made a final determination on the merits, unless it is earlier vacated by interim decision of the administrative law judge. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the original hearing has been completed.

SEC. 2. Section 1596.803 of the Health and Safety Code, as added by Section 24.5 of Chapter 1315 of the Statutes of 1992, is amended to read:

1596.803. (a) (1) A fee adjusted by facility and capacity shall be charged by the department for the issuance of an original license to operate a child day care facility or for processing any application therefor. After initial licensure, the fee shall be charged by the department annually. The amount of the fee is for the purpose of financing a portion of the application and annual processing costs and the activities specified in subdivision (b). The fee shall be assessed as follows:

Fee Schedule

Facility Type	Capacity	Original Application	Annual Fee
Family Day Care	1–6	$25	$25
	7–12	$50	$50
Day Care Centers	1–30	$100	$100
	31–60	$200	$200
	61–75	$250	$250
	76–90	$300	$300
	91–120	$400	$400
	121+	$500	$500

(2) (A) Notwithstanding paragraph (1), any licensee, including, but not limited to, public agencies with more than one licensed facility shall pay no more than five hundred dollars ($500) for the

original application and five hundred dollars ($500) for the annual fee if the capacity is less than 1,000 children in the aggregate. Any licensee, including, but not limited to, public agencies with more than one licensed facility shall pay no more than one thousand dollars ($1,000) for the original application and one thousand dollars ($1,000) for the annual fee if the capacity is 1,000 children or more in the aggregate.

(B) Notwithstanding subparagraph (A), the fees provided for in paragraph (1) shall also apply to any for-profit corporation, person, firm, association, or partnership holding 25 or more day care center licenses.

(3) No local jurisdiction shall impose any business license, fee, or tax for the privilege of operating a small family day care home licensed under this act.

(b) (1) The revenues collected from licensing fees pursuant to this section, when appropriated, shall be utilized by the department to allow increased assistance and monitoring of facilities with a history of noncompliance with licensing laws and regulations pursuant to this act, and other administrative activities in support of the licensing program. The revenues collected shall be used in addition to any other funds appropriated in support of the licensing program.

(2) The department shall not utilize any portion of these revenues sooner than 30 days after notification in writing of the purpose and use, as approved by the Department of Finance, to the Chairperson of the Joint Legislative Budget Committee, and the chairpersons of the committee in each house that considers appropriations for each fiscal year. For fiscal year 1992–93 and thereafter, the department shall submit a budget change proposal to justify any positions or any other related support costs on an ongoing basis.

(c) A child day care facility may use a bona fide business or personal check to pay the license fee required under this section.

(d) Failure to pay required license fees, including the finding of insufficient funds to cover bona fide business or personal checks submitted for this purpose, shall constitute grounds for denial of a license or special permit or forfeiture of a license or special permit.

(e) The department shall assess the fees on an annual basis and may set time periods to spread the licensee's due dates throughout the year. The fees shall be considered delinquent 30 days after the billing date.

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

In order to prevent the impairment of the rights of community care facility licensees to judicial review and to ensure the protection of the due process rights of those licensees at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 476

An act to amend Section 33080.5 of the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 33080.5 of the Health and Safety Code is amended to read:

33080.5. For the purposes of compliance with subdivision (b) of Section 33080.1, the fiscal statement shall contain the following information:

(a) The amount of outstanding indebtedness of the agency and each project area.

(b) The amount of tax increment property tax revenues generated in the agency and in each project area.

(c) The amount of tax increment revenues paid to, or spent on behalf of, a taxing agency, other than a school or community college district, pursuant to subdivision (b) of Section 33401 or Section 33676. Moneys expended on behalf of a taxing agency shall be itemized per each individual capital improvement.

(d) The financial transactions report required pursuant to Section 53891 of the Government Code.

(e) The amount allocated to school or community college districts pursuant to each of the following provisions: (1) Section 33401; (2) Section 33445; (3) Section 33445.5; (4) paragraph (2) of subdivision (a) of Section 33676; and (5) Section 33681.

(f) The amount of existing indebtedness, as defined in Section 33682, and the total amount of payments required to be paid on existing indebtedness for that fiscal year.

(g) Any other fiscal information which the agency believes useful to describe its programs.

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

CHAPTER 477

An act to add Section 33334.20 to the Health and Safety Code, relating to redevelopment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 33334.20 is added to the Health and Safety Code, to read:

33334.20. (a) Notwithstanding any other provision of law, for the 1993–94 fiscal year, a redevelopment agency to which this section is applicable may set aside into the Low and Moderate Income Housing Fund established pursuant to Section 33334.3 an amount that is less than that required by subdivision (a) of Section 33334.2 or subdivision (c), (d), or (e) of Section 33334.6, provided that, in the fiscal year, the legislative body of the agency has made a finding, by resolution, that the amount deposited, when added to other public funds expended or appropriated in that fiscal year for the purposes described in subdivision (e) of Section 33334.2, is equal to or greater than the amount otherwise required to be set aside by subdivision (a) of Section 33334.2 or subdivision (c), (d), or (e) of Section 33334.6.

(b) This section is applicable to a redevelopment agency within a city to which all of the following apply:

(1) The city has a population of less than 100,000 according to the 1990 federal decennial census.

(2) The legislative body of the city has made a finding, by resolution, that property damage in the city during the civil unrest that occurred between April 29, 1992, and May 3, 1992, exceeded fifty million dollars ($50,000,000).

(3) The city has adopted a housing element, pursuant to Section 65585 of the Government Code, that substantially complies with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(c) (1) If, pursuant to subdivision (a), the agency deposits less than 20 percent of the taxes allocated to the agency pursuant to Section 33670 in the 1993–94 fiscal year in the Low and Moderate Income Housing Fund, the amount equal to the difference between 20 percent of the taxes allocated to the agency pursuant to Section 33670 for each affected project area and the amount deposited that year shall constitute a deficit of the project.

(2) The agency shall adopt a plan to eliminate the deficit in subsequent years, beginning with payments in the 1999–00 fiscal year and completing payments by 2003–04 fiscal year. In calculating the amount of deficit, no interest may be included. If the amount of the

deficit has not been eliminated by July 1, 2004, the county auditor is directed to withhold the amount of the remaining deficit and to make the deposit into the agency's Low and Moderate Income Housing Fund.

(d) If, pursuant to subdivision (a), an agency deposits less than 20 percent of the taxes allocated to the agency pursuant to Section 33670 in the 1993–94 fiscal year in the Low and Moderate Income Housing Fund, the amount of the deficit shall be used to refinance bonds and to make payments on new bonds. The proceeds of these bonds shall be used to assist areas damaged during the civil unrest which occurred between April 29, 1992, and May 3, 1992.

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

In order to allow redevelopment agencies to finance needed public improvements in the wake of the civil unrest that occurred between April 29, 1992, and May 3, 1992, it is necessary that this act take effect immediately.

CHAPTER 478

An act to amend Sections 2701.07 and 2703.07 of the Streets and Highways Code, relating to transportation.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 2701.07 of the Streets and Highways Code is amended to read:

2701.07. The appropriations for capital improvements and acquisition of rolling stock for intercity rail, commuter rail, and urban rail transit shall be used only on the following routes and corridors and those specified by statutes enacted by the Legislature:

(a) Intercity Rail.
(1) Los Angeles-San Diego.
(2) Santa Barbara County-Los Angeles.
(3) Los Angeles-Fresno-San Francisco Bay area and Sacramento.
(4) San Francisco Bay area-Sacramento-Auburn.
(5) San Francisco-Eureka.
(b) Commuter Rail.
(1) San Francisco-San Jose.
(2) San Jose-Gilroy.
(3) Gilroy-Monterey.
(4) Stockton-Livermore.
(5) Orange County-Los Angeles.

(6) Riverside County-Orange County.
(7) San Bernardino County-Los Angeles.
(8) Ventura County-San Fernando Valley-Los Angeles.
(9) Saugus-Los Angeles.
(10) Oceanside-San Diego.
(11) Escondido-Oceanside.
(12) Riverside-Coachella Valley.
(13) Riverside-Los Angeles.
(14) Jackson-Sacramento.
(15) Jackson-Stockton.
(c) Urban Rail Transit.
(1) Sacramento.
(A) Roseville extension.
(B) Hazel extension.
(C) Meadowview extension.
(D) Arena extension.
(2) San Francisco Bay Area Rapid Transit District.
(A) Bayfair-East Livermore.
(B) Concord-East Antioch.
(C) Fremont-Warm Springs.
(D) Daly City-San Francisco International Airport.
(E) Coliseum-Oakland International Airport.
(F) Richmond-Crockett.
(G) Warm Springs-San Jose.
(3) Alameda and Contra Costa Counties.
(A) Pleasanton-Concord.
(4) Santa Clara County.
(A) Sunnyvale-Santa Clara.
(B) San Jose-Vasona.
(C) State Highway Route 237.
(5) San Francisco City and County.
(A) Extensions, improvements, and additions to the San Francisco Municipal Railway.
(6) San Francisco-Santa Rosa-Sonoma.
(7) Santa Cruz County.
(A) Boardwalk area-University of California at Santa Cruz.
(8) Los Angeles Metro Rail.
(A) Wilshire/Alvarado-Wilshire/Western.
(B) Wilshire/Alvarado-Lankershim/Chandler.
(C) San Fernando Valley extension.
(D) Union Station-State Highway Routes 5 and 710.
(E) Wilshire/Western-Wilshire/State Highway Route 405.
(9) Los Angeles County Rail Corridors.
(A) San Fernando Valley.
(B) Pasadena-Los Angeles.
(C) Coastal Corridor (Torrance to Santa Monica).
(D) Santa Monica-Los Angeles.
(E) State Highway Route 5.
(F) State Highway Route 110.

(10) San Diego County.
(A) El Cajon-Santee.
(B) Downtown-Old Town.
(C) Airport-Point Loma.
(D) Old Town-Mission Valley.
(E) Mission Valley-La Mesa.
(F) La Jolla-Miramar.
(G) Old Town-Del Mar.
(H) Downtown-Escondido.
(I) Chula Vista-Otay Mesa.
(11) Fullerton-Irvine, with an extension from Santa Ana to Stanton, and an extension to Norwalk.
(12) Riverside/San Bernardino to Orange County, including extensions to Redlands and Hemet.

SEC. 2. Section 2703.07 of the Streets and Highways Code is amended to read:

2703.07. The appropriations for capital improvements and acquisition of rolling stock for intercity rail, commuter rail, and urban rail transit shall be used only on the following routes and corridors and those specified by statutes enacted by the Legislature:
(a) Intercity Rail.
(1) Los Angeles-San Diego.
(2) Santa Barbara County-Los Angeles.
(3) Los Angeles-Fresno-San Francisco Bay area and Sacramento.
(4) San Francisco Bay area-Sacramento-Auburn.
(5) San Francisco-Eureka.
(6) Santa Barbara-San Luis Obispo County-San Jose.
(b) Commuter Rail.
(1) San Francisco-San Jose.
(2) San Jose-Gilroy.
(3) Gilroy-Monterey.
(4) Gilroy-Hollister.
(5) Stockton-Livermore.
(6) Orange County-Los Angeles.
(7) Riverside County-Orange County.
(8) San Bernardino County-Los Angeles.
(9) Ventura County-San Fernando Valley-Los Angeles.
(10) Saugus-Los Angeles.
(11) Oceanside-San Diego.
(12) Escondido-Oceanside.
(13) Riverside-Coachella Valley.
(14) Riverside-Los Angeles.
(15) Jackson-Sacramento.
(16) Jackson-Stockton.
(c) Urban Rail Transit.
(1) Sacramento.
(A) Roseville extension.
(B) Hazel extension.
(C) Meadowview extension.

(D) Arena extension.
(2) San Francisco Bay Area Rapid Transit District.
(A) Bayfair-East Livermore.
(B) Concord-East Antioch.
(C) Fremont-Warm Springs.
(D) Daly City-San Francisco International Airport.
(E) Coliseum-Oakland International Airport.
(F) Richmond-Crockett.
(G) Warm Springs-San Jose.
(3) Alameda and Contra Costa Counties.
(A) Pleasanton-Concord.
(4) Santa Clara County.
(A) Sunnyvale-Santa Clara.
(B) San Jose-Vasona.
(C) State Highway Route 237.
(5) San Francisco City and County.
(A) Extensions, improvements, and additions to the San Francisco Municipal Railway.
(6) San Francisco-Santa Rosa-Sonoma.
(7) Santa Cruz County.
(A) Boardwalk area-University of California at Santa Cruz-Watsonville Junction-Davenport.
(8) Los Angeles Metro Rail.
(A) Wilshire/Alvarado-Wilshire/Western.
(B) Wilshire/Alvarado-Lankershim/Chandler.
(C) San Fernando Valley extension.
(D) Union Station-State Highway Routes 5 and 710.
(E) Wilshire/Western-Wilshire/State Highway Route 405.
(9) Los Angeles County Rail Corridors.
(A) San Fernando Valley.
(B) Pasadena-Los Angeles.
(C) Coastal Corridor (Torrance to Santa Monica).
(D) Santa Monica-Los Angeles.
(E) State Highway Route 5.
(F) State Highway Route 110.
(10) San Diego County.
(A) El Cajon-Santee.
(B) Downtown-Old Town.
(C) Airport-Point Loma.
(D) Old Town-Mission Valley.
(E) Mission Valley-La Mesa.
(F) La Jolla-Miramar.
(G) Old Town-Del Mar.
(H) Downtown-Escondido.
(I) Chula Vista-Otay Mesa.
(11) Fullerton-Irvine, with an extension from Santa Ana to Stanton, and an extension to Norwalk.
(12) Riverside/San Bernardino to Orange County, including extensions to Redlands and Hemet.

CHAPTER 479

An act to amend Section 3070 of the Civil Code, and to amend Sections 615 and 27907 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 3070 of the Civil Code is amended to read:

3070. (a) Whenever the possessory lien upon any vehicle is lost through trick, fraud, or device, the repossession of the vehicle by the lienholder revives the possessory lien but any lien so revived is subordinate to any right, title, or interest of any person under any sale, transfer, encumbrance, lien, or other interest acquired or secured in good faith and for value between the time of the loss of possession and the time of repossession.

(b) It is a misdemeanor for any person to obtain possession of any vehicle or any part thereof subject to a lien pursuant to this chapter by trick, fraud, or device.

(c) It is a misdemeanor for any person claiming a lien on a vehicle to knowingly violate any provisions of this chapter.

(d) (1) Any person who improperly causes a vehicle to be towed or removed in order to create or acquire a lienhold interest enforceable under this chapter, or who violates subdivision (c), shall forfeit all claims for towing, removal, or storage, and shall be liable to the owner or lessee of the vehicle for the cost of removal, transportation, and storage, damages resulting from the towing, removal, transportation, or storage of the vehicle, attorneys' fees, and court costs.

(2) For purposes of this subdivision, "improperly causes a vehicle to be towed or removed" includes, but is not limited to, engaging in any of the following acts, the consequence of which is the towing or removal of a vehicle:

(A) Failure to comply with Section 10650, 10652.5, or 10655 of the Vehicle Code.

(B) Misrepresentation of information described in subdivision (b) of Section 10650 of the Vehicle Code.

(C) Failure to comply with Section 22658 of the Vehicle Code.

(D) Failure, when obtaining authorization for the removal of a vehicle from a vehicle owner or operator at the scene of an accident where a law enforcement officer is not present, to present a form for signature that plainly identifies all applicable towing and storage fees and charges by type and amount, and identifies the name and address of the storage facility, unless a different storage facility is specified by the vehicle owner or operator, and to furnish a copy of the signed form to the owner or operator.

(E) Failure by the owner or operator of a facility used for the

storage of towed vehicles to display, in plain view at all cashiers' stations, a sign not less than 17 by 22 inches in size with lettering not less than one inch in height, disclosing all storage fees and charges in force, including the maximum daily storage rate.

(F) Undertaking repairs or service on a vehicle which is being stored at a facility used for the storage of towed vehicles without first providing a written estimate to, and obtaining the express written consent of, the owner of the vehicle.

(G) Promising to pay or paying money or other valuable consideration by any owner or operator of a towing service to the owner or operator of the premises from which the vehicle is towed or removed, for the privilege of towing or removing the vehicle.

SEC. 2. Section 615 of the Vehicle Code is amended to read:

615. (a) A "tow truck" is a motor vehicle which has been altered or designed and equipped for, and primarily used in the business of, transporting vehicles by means of a crane, hoist, tow bar, tow line, or dolly or is otherwise primarily used to render assistance to other vehicles. A "roll-back carrier" designed to carry up to two vehicles is also a tow truck. A trailer for hire that is being used to transport a vehicle is a tow truck. "Tow truck" does not include an automobile dismantlers' tow vehicle.

(b) Persons licensed as a repossession agency pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code may utilize a tow truck when repossessing vehicles.

(c) "Automobile dismantlers' tow vehicle" means a tow vehicle which is registered by an automobile dismantler licensed pursuant to Chapter 3 (commencing with Section 11500) of Division 5 and which is used exclusively to tow vehicles owned by that automobile dismantler in the course of the automobile dismantling business.

SEC. 3. Section 27907 of the Vehicle Code is amended to read:

27907. There shall be displayed in a conspicuous place on both the right and left side of a tow truck or an automobile dismantler's tow vehicle used to tow or carry vehicles a sign showing the name of the company or the owner or operator of the tow truck or the automobile dismantler's tow vehicle. The sign shall also contain the business address and telephone number of the owner or driver. The letters and numbers of the sign shall not be less than 2 inches in height and shall be in contrast to the color of the background upon which they are placed.

A person licensed as a repossession agency pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or a registered employee of the agency, may use the license number issued to the agency by the Department of Consumer Affairs in lieu of a name, business address, and telephone number.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction,

changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 480

An act making a appropriation for the California Theatre, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. (a) The sum of three hundred nine thousand dollars ($309,000) appropriated from the Public Resources Account in the Cigarette and Tobacco Products Surtax Fund to the Department of Parks and Recreation for a grant to the City of Pittsburg for Cornwall Station pursuant to subparagraph (E) of paragraph (3) of subdivision (c) of Section 4 of Chapter 1241 of the Statutes of 1989, as amended by Chapter 38 of the Statutes of 1990, is hereby reappropriated to the department for a grant to the city for the acquisition and restoration of the California Theatre.

(b) If the appropriation for Cornwall Station specified in subdivision (a) has lapsed, the sum of three hundred nine thousand dollars ($309,000) is hereby appropriated from the Public Resources Account in the Cigarette and Tobacco Products Surtax Fund to the Department of Parks and Recreation for a grant to the City of Pittsburg for the acquisition and restoration of the California Theatre.

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

In order to ensure funding for the acquisition and restoration of the California Theatre, a valuable historical resource, it is necessary that this act take effect immediately.

CHAPTER 481

An act to add Section 22651.9 to the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 22651.9 is added to the Vehicle Code, to read:

22651.9. (a) Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or city and county in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act when the vehicle is found upon a street or any public lands, if all of the following requirements are satisfied:

(1) Because of a sign or placard on the vehicle, it appears that the primary purpose of parking the vehicle at that location is to advertise to the public the private sale of that vehicle.

(2) Within the past 30 days, the vehicle is known to have been previously issued a notice of parking violation, under local ordinance, which was accompanied by a notice containing all of the following:

(A) A warning that an additional parking violation may result in the impoundment of the vehicle.

(B) A warning that the vehicle may be impounded pursuant to this section, even if moved to another street, so long as the signs or placards offering the vehicle for sale remain on the vehicle.

(C) A listing of the streets or public lands subject to the resolution or ordinance adopted pursuant to paragraph (4), or if all streets are covered, a statement to that effect.

(3) The notice of parking violation was issued at least 24 hours prior to the removal of the vehicle.

(4) The local authority of the city, county, or city and county has, by resolution or ordinance, authorized the removal of vehicles pursuant to this section from the street or public lands on which the vehicle is located.

(b) Section 22852 applies to the removal of any vehicle pursuant to this section.

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

In order to assist in alleviating the critical shortage of parking spaces in a city, county, and city and county, and to help reduce

traffic hazards in those jurisdictions it is necessary that this act take effect immediately.

CHAPTER 482

An act to add Section 532f to the Penal Code, relating to crime.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 532f is added to the Penal Code, to read:

532f. (a) (1) A person, other than the loan applicant, who commits a public offense under paragraph (1), (2), or (3) of Section 532a in connection with an application for a loan to be secured by real property is guilty of a misdemeanor, punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

(2) The court shall determine the amount of any economic loss to a victim caused by the criminal conduct of the defendant and shall, to the extent possible, order the defendant to make restitution to the victim in that amount.

(b) An applicant for a loan to be secured by real property who violates paragraph (1), (2), or (3) of Section 532a is guilty of a misdemeanor, punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in a county jail not exceeding six months, or by both the fine and imprisonment.

(c) This section shall not be construed to preclude the application of any other law that may apply to a transaction.

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

CHAPTER 483

An act to amend Section 123.6 of, and to add Section 5311.5 to the Labor Code, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 123.6 of the Labor Code is amended to read:

123.6. (a) All workers' compensation referees and settlement conference referees employed by the administrative director shall subscribe to the California Code of Judicial Conduct adopted by the Conference of California Judges and shall not otherwise, directly or indirectly, engage in conduct contrary to that code.

The administrative director shall adopt regulations to enforce this section. To the extent possible, the rules shall be consistent with the procedures established by the Commission on Judicial Performance for regulating the activities of state judges, and, to the extent possible, with the gift, honoraria, and travel restrictions on legislators contained in the Political Reform Act of 1974.

(b) Honoraria or travel allowed by the administrative director or otherwise not prohibited by this section in connection with any public or private conference, convention, meeting, social event, or like gathering, the cost of which is significantly paid for by attorneys who practice before the board, may not be accepted unless the administrative director has provided prior approval in writing to the workers' compensation referee allowing him or her to accept those payments.

SEC. 2. Section 5311.5 is added to the Labor Code, to read:

5311.5. The administrative director shall require all workers' compensation referees to participate in continuing education to further their abilities as workers' compensation referees, including courses in ethics and conflict of interest. The director may coordinate the requirements with those imposed upon attorneys by the State Bar in order that the requirements may be consistent.

SEC. 3. This act shall become operative only if AB 110 and AB 1300 are both enacted before January 1, 1994, in which case this act shall become operative on the date that the last of those bills is enacted or on the date this act becomes effective, whichever is last.

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

In order to assure the integrity of, and confidence in, workers' compensation referees it is necessary for this act to take effect immediately.

CHAPTER 484

An act to amend Section 73394 of, and to add Article 10.5 (commencing with Section 73698) to Chapter 10 of Title 8 of, the Government Code, relating to courts.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 73394 of the Government Code is amended to read:

73394. For the purposes of election of judges, the "division" referred to in this article is and shall continue to be the "district" referred to in subdivision (b) of Section 16 of Article VI of the California Constitution. The judge of each division shall be elected by only the electors of the division, and not from the Kings County Municipal Court District at large. However, any otherwise qualified candidate is eligible to be elected from any division if he or she resides within the boundaries of the district as a whole.

SEC. 2. Article 10.5 (commencing with Section 73698) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 10.5. Central Valley Municipal Court of Fresno County

73698. This article applies to the Central Valley Municipal Court District of Fresno County. The court referred to in this article shall become operative upon the consolidation of the Coalinga, Firebaugh, Fowler-Caruthers, Kerman, Kingsburg-Riverdale, Parlier-Selma, Reedley-Dunlap, and Sanger Judicial Districts by the Board of Supervisors of the County of Fresno.

73698.1. (a) On the operative date of this article, the Central Valley Municipal Court District shall consist of the following divisions:

(1) Coalinga Division.
(2) Firebaugh Division.
(3) Fowler-Caruthers Division.
(4) Kerman Division.
(5) Kingsburg-Riverdale Division.
(6) Parlier-Selma Division.
(7) Reedley-Dunlap Division.
(8) Sanger Division.

(b) The boundaries of the divisions of the Central Valley Municipal Court District shall be established by the Board of Supervisors of the County of Fresno.

73698.2. There are eight judges in the Central Valley Municipal Court District. There shall be one judge for each division.

73698.3. On the operative date of this article, the justice court

judges of the Coalinga, Firebaugh, Fowler-Caruthers, Kerman, Kingsburg-Riverdale, Parlier-Selma, Reedley-Dunlap, and Sanger Judicial Districts shall assume the positions of Municipal Court Judges of the Coalinga, Firebaugh, Fowler-Caruthers, Kerman, Kingsburg-Riverdale, Parlier-Selma, Reedley-Dunlap, and Sanger Divisions, respectively, pursuant to Section 71084.

73698.4. For the purposes of qualification and election of judges, the "division" referred to in this article is and shall continue to be the "district" referred to in subdivision (b) of Section 16 of Article VI of the California Constitution. The judge of each division shall be elected from the division and only by the electors of the division, and not from the Central Valley Municipal Court District at large.

73698.5. The judges of the Central Valley Municipal Court District shall, pursuant to local rule, select one of the judges of the district to serve as presiding judge of the district and shall formulate rules and regulations not inconsistent with law or rules and regulations adopted and prescribed by the Judicial Council for transfer of cases, assignment of judges, scheduling of vacation of judges, and other administrative matters such as will promote uniformity of procedures and efficiency and economy in the business of the district. These rules and regulations shall be administered by the court administrator under the supervision and control of the presiding judge of the district. Any rules and regulations adopted pursuant to Section 72002.1 shall be adopted by a majority vote of the judges of the district.

73698.6. Facilities for the court shall be maintained in the Cities of Coalinga, Firebaugh, Fowler, Kerman, Kingsburg, Parlier, Selma, Reedley, and Sanger, and the communities of Caruthers and Riverdale; and in such other locations within the County of Fresno as are designated by the board of supervisors. The court shall hold sessions at each facility as business requires. At the direction of the court, arraignment of criminal defendants who are in custody at the Fresno County Detention Facility shall be held at the court facility located at the Fresno County Detention Facility.

73698.7. Notwithstanding any other provision of law, the court may adopt local rules for purposes of selecting trial jurors pursuant to Section 203 of the Code of Civil Procedure.

Trial jurors for each session of the courts of the district shall be selected from persons residing within the divisions within which sessions are held.

73699. There shall be one court administrator to be appointed by and serve at the pleasure of the majority of the judges of the court, who shall be the clerk, administrator, and secretary of the court, and who shall receive a salary specified in Band "D" of the Fresno County Salary Resolution in effect on the effective date of this article. The provisions of Section 71183 shall not apply to this position.

73699.1. (a) The court administrator may, in consultation with the judges of the court, appoint the following court personnel who shall be compensated pursuant to Sections 73684, 73685, 73686, and

73687:

(1) Eighteen office assistants I, II, or III, who shall receive a salary specified in Range 545, 587, or 652, respectively.

(2) Twenty-eight legal process clerks I or II, who shall receive a salary specified in Range 841 or 943, respectively.

(3) Eight supervising legal process clerks, who shall receive a salary specified in Range 1124.

(b) The court administrator may appoint any combination of legal process clerks and office assistants, not to exceed a total of 48. Whenever the business of the court or other emergency requires a greater number of employees or a reclassification of employees in order to effectively carry out the duties and functions of the court, the court administrator may, with the approval of the board of supervisors, establish new positions or reclassify existing positions and appoint such additional employees as may be necessary, each appointment to remain in effect only until January 1 of the second fiscal year following the fiscal year in which the appointment was made, unless subsequently ratified by the Legislature. The order establishing such positions shall designate the position, title, and salary range.

(c) Whenever reference is made to a numbered salary range or lettered salary band in any section of this article, the schedule of hours, rates of pay, and approximate monthly equivalents found in the Salary Resolution of the County of Fresno in effect on the effective date of this article shall apply.

(d) If the board of supervisors adopts a revised salary resolution for county employees or applies new salary range numbers for the purpose of salary adjustment, the new salary rates shall apply equally to the positions named in this article. Any salary adjustment made pursuant to this section shall be effective on the same date as the action applicable to other county permanent classified employees, but shall remain in effect only until January 1 of the second fiscal year following the fiscal year in which such adjustment in salary is made, unless subsequently ratified by the Legislature.

(e) Any officer or attaché of the court who receives a promotion to a position having an overlapping salary range shall be placed upon the step of the new salary range as provided by the Fresno County Salary Resolution.

73699.2. The court administrator, clerks, and other attachés of the justice courts in Fresno County shall succeed as authorized by law to the equivalent municipal court position.

73699.3. The sheriff and his or her deputies shall act as ex officio marshal and deputy marshals of the court.

73699.4. Except as specifically provided in this article to the contrary, all benefits and privileges and other provisions affecting the employment of county employees shall apply to all officers and attachés of the court. All officers and employees of the Central Valley Municipal Court District shall be entitled to the same retirement, vacations, and other benefits allowed to employees of the county and

be subject to the personnel regulations, memoranda of understanding, management benefits, and the affirmative action plan of the County of Fresno as they exist on the effective date of this article.

73699.5. (a) A majority of the judges may appoint two full-time official reporters, to serve at the pleasure of the judges, who shall be compensated pursuant to Section 73691.

(b) Pursuant to Section 72194, the judges of the court may appoint as many additional reporters as the business of the court requires, who shall be known as official reporters pro tempore and shall be compensated pursuant to Section 73692.

(c) Fees for transcription of testimony and proceedings in court shall be paid by the litigants to official reporters and official reporters pro tempore as otherwise provided by law. In all cases where by law the court may direct the payment of transcription fees out of the county treasury, such fees shall, upon order of the court, be paid from general funds, including fees for transcription of testimony in proceedings in criminal cases as provided in Sections 69947 to 69953, inclusive, which shall be paid from the county treasury.

73699.6. Interpreters appointed by the court pursuant to Section 68092 shall be allowed for each day's or one-half day's actual attendance upon the court when legally required, such fee as may be allowed by the court in accordance with Section 73695, unless the court finds good cause for payment of such different amounts as may be necessary to carry out the business of the court.

CHAPTER 485

An act to add and repeal Section 22659.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. The Legislature hereby finds and declares that under the Red Light Abatement Law every building or place used for, among other unlawful purposes, prostitution, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered. It is recognized that in many instances vehicles are used in the commission of acts of prostitution and that if these vehicles were subject to the same procedures, currently applicable to buildings and places, the commission of prostitution in vehicles would be vastly curtailed. The Legislature, therefore, intends to enact a five-year pilot program, in order to ascertain whether declaring motor vehicles a public nuisance when used in the commission of acts of prostitution would have a substantial effect

upon the reduction of prostitution in neighborhoods, thereby serving the local business owners and citizens of our urban communities.

SEC. 2. Section 22659.5 is added to the Vehicle Code, to read:

22659.5. (a) Notwithstanding any other provision of law, the County of San Diego, any city in that county, and the City of Oakland may adopt an ordinance establishing a five-year pilot program which implements procedures for declaring any motor vehicle a public nuisance when the vehicle is used in the commission of an act in violation of subdivision (b) of Section 647 of the Penal Code, and there is a conviction of the underlying offense.

(b) The ordinance may also include procedures to enjoin and abate the declared nuisance by ordering the defendant not to use the vehicle again for purposes of violating subdivision (b) of Section 647 of the Penal Code and authorizing the temporary impoundment of the vehicle that the court has declared a nuisance if the defendant violates the order within one year of the court's declaration that the vehicle is a nuisance.

(c) The only action that may be taken to enjoin and abate the declared nuisance are those actions specified in subdivision (b).

(d) Any procedures implemented pursuant to this section shall ensure that no vehicle shall be declared a nuisance in either of the following circumstances:

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

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

(e) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

CHAPTER 486

An act to add Section 72025 to the Education Code, relating to community colleges.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 72025 is added to the Education Code, to read:

72025. (a) The governing board of the Long Beach Community College District may establish trustee areas pursuant to this section.

(b) Notwithstanding any other provision of law:

(1) If a proposal for the establishment of trustee areas is approved by a majority of the voters voting at the election, the establishment of trustee areas shall be effective upon the expiration of the term of the member having the shortest remaining unexpired portion of a term on the date of the election approving the establishment of trustee areas, or the date of expiration of the term of any member elected to the board during the year of the election approving the establishment of trustee areas, whichever is shorter.

(2) The term of any member serving on the board on the date of the election approving the establishment of trustee areas shall be shortened until the date of expiration of the term of the member having the shortest remaining unexpired portion of a term on the date of the election approving the establishment of trustee areas, or the date of expiration of the term of any member elected to the board during the year of the election approving the establishment of trustee areas, whichever is shorter.

(3) Vacancies shall be filled as provided by other provisions of law and the term of the person filling the vacancy shall be determined in accordance with paragraph (2).

SEC. 2. Due to the unique circumstances concerning the Long Beach Community College District, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 487

An act to amend Sections 33353, 33354, and 35179 of, and to amend and repeal Section 33352 of, the Education Code, relating to schools.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. This act shall be known and may be cited as the "B.T. Collins Interscholastic Athletic Act of 1993."

SEC. 2. Section 33352 of the Education Code, as amended by Section 1 of Chapter 617 of the Statutes of 1991, is amended to read:

33352. (a) The State Department of Education shall exercise general supervision over the courses of physical education in elementary and secondary schools of the state; advise school officials, school boards, and teachers in matters of physical education; and investigate the work in physical education in the public schools.

(b) This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 33352 of the Education Code, as added by Section

2 of Chapter 1010 of the Statutes of 1976, is amended to read:

33352. (a) The State Department of Education shall exercise general supervision over the courses of physical education in elementary and secondary schools of the state; exercise general control over all athletic activities of the public schools; advise school officials, school boards, and teachers in matters of physical education; and investigate the work in physical education in the public schools.

(b) This section shall become operative on July 1, 1997.

SEC. 4. Section 33353 of the Education Code is amended to read:

33353. (a) The California Interscholastic Federation is a voluntary organization consisting of school and school related personnel with responsibility, generally, for administering interscholastic athletic activities in secondary schools. It is the intent of the Legislature that the California Interscholastic Federation, in consultation with the State Department of Education, implement the following policies:

(1) Give school district governing boards specific authority to select their athletic league representatives.

(2) Require that all league, section, and state meetings affiliated with the California Interscholastic Federation be subject to the notice and hearing requirements of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code).

(3) Establish a neutral final appeals body to hear complaints related to interscholastic athletic policies.

(b) This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 33354 of the Education Code is amended to read:

33354. (a) The State Department of Education shall have the following authority over interscholastic athletics:

(1) The state department may state that the policies of school districts, of associations or consortia of school districts, and of the California Interscholastic Federation, concerning interscholastic athletics, are in compliance with both state and federal law.

(2) If the state department states that a school district, an association, or consortium of school districts, or the California Interscholastic Federation is not in compliance with state or federal law, the state department may require the school district, association, or consortium, or the federation to adjust its policy so that it is in compliance. However, the state department shall not have authority to determine the specific policy that a school district, association, or consortium, or the federation must adopt in order to comply with state and federal laws.

(3) If the state department states that a school district, association, or consortium, or the federation is not in compliance with state or federal law in matters relating to interscholastic activities, and the school district, association, or consortium, or the federation does not

change its policy in order to comply with these laws, the state department may commence with appropriate legal proceedings against the California Interscholastic Federation, the school district or against school districts that are members of the California Interscholastic Federation or the association or consortium that the department states is in noncompliance. In such a legal proceeding the court shall determine the matter de novo. The state department may make recommendations for appropriate remedies in these proceedings.

(b) This section shall not be construed or interpreted to limit the discretion of local governing boards, or voluntary associations formed or maintained pursuant to subdivision (b) of Section 35179, in any policy, program, or activity that is in compliance with state and federal law.

(c) The state law with which the policies of school districts, associations, or consortia of school districts, and of the California Interscholastic Federation, concerning interscholastic athletics, are required to comply, in accordance with this section, includes, but is not limited to, any regulations issued by the State Board of Education pursuant to Section 232 with regard to sex discrimination in interscholastic athletics.

(d) This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 35179 of the Education Code is amended to read:

35179. (a) Each school district governing board shall have general control of, and be responsible for, all aspects of the interscholastic athletic policies, programs, and activities in its district, including, but not limited to, eligibility, season of sport, number of sports, personnel, and sports facilities. In addition, the board shall assure that all interscholastic policies, programs, and activities in its district are in compliance with state and federal law.

(b) Governing boards may enter into associations or consortia with other boards for the purpose of governing regional or statewide interscholastic athletic programs by permitting the public schools under their jurisdictions to enter into a voluntary association with other schools for the purpose of enacting and enforcing rules relating to eligibility for, and participation in, interscholastic athletic programs among and between schools.

(c) Each governing board, or its designee, shall represent the individual schools located within its jurisdiction in any voluntary association of schools formed or maintained pursuant to this section.

(d) No voluntary interscholastic athletic association, of which any public school is a member, shall discriminate against, or deny the benefits of any program to, any person on the basis of race, sex, or ethnic origin.

(e) Interscholastic athletics is defined as those policies, programs, and activities that are formulated or executed in conjunction with,

or in contemplation of, athletic contests between two or more schools, either public or private.

(f) This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. (a) Not later than January 1, 1995, the California Interscholastic Federation shall complete a strategic long-range plan, which shall address the manner in which the federation has implemented interscholastic athletic policies and procedures including, but not limited to, governance and gender equity.

(b) On or before January 1, 1996, the State Department of Education shall report to the Legislature on the methodology, process, and participation of parties in interest relative to the California Interscholastic Federation, which shall include a review of the definition of interscholastic athletics and a critique of the recommendations made in the plan required in subdivision (a).

CHAPTER 488

An act to amend Section 40902 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 40902 of the Vehicle Code is amended to read:

40902. (a) The court, pursuant to this section, shall, by rule, provide that the defendant may elect to have a trial by written declaration upon any alleged infraction, as charged by the citing officer, involving a violation of this code or any local ordinance adopted pursuant to this code, other than an infraction cited pursuant to Article 2 (commencing with Section 23152) of Chapter 12 of Division 11.

(b) If the defendant elects to have a trial by written declaration, the defendant shall, at the time of submitting that declaration, submit bail in the amount established in the uniform traffic penalty schedule pursuant to Section 40310. If the defendant is found not guilty or if the charges are otherwise dismissed, the amount of the bail shall be promptly refunded to the defendant.

(c) Notwithstanding Division 10 (commencing with Section 1200) of the Evidence Code, the rules governing trials by written declaration may provide for testimony and other relevant evidence to be introduced in the form of a notice to appear issued pursuant to Section 40500, a business record or receipt, a sworn declaration of

the arresting officer, or a written statement or letter signed by the defendant.

(d) If the defendant is dissatisfied with a decision of the court in a proceeding pursuant to this section, the defendant shall be granted a trial de novo.

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

CHAPTER 489

An act to amend Section 7579.5 of the Government Code, relating to children.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 7579.5 of the Government Code is amended to read:

7579.5. (a) A surrogate parent shall not be appointed for a child who is a dependent or ward of the court unless the court specifically limits the right of the parent or guardian to make educational decisions for the child. A surrogate parent shall not be appointed for a child who has reached the age of majority unless the child has been declared incompetent by a court of law.

(b) A local educational agency shall appoint a surrogate parent for a child under one or more of the following circumstances:

(1) The child is adjudicated a dependent or ward of the court pursuant to Section 300, 601, or 602 of the Welfare and Institutions Code upon referral of the child to a local educational agency for special education and related services, or in cases where the child already has a valid individualized education program.

(2) No parent for the child can be identified.

(3) The local educational agency, after reasonable efforts, cannot discover the location of a parent.

(c) When appointing a surrogate parent, the local educational agency shall, as a first preference, select a relative caretaker, foster

parent, or court appointed special advocate, if any of these individuals exist and is willing and able to serve. If none of these individuals is willing or able to act as a surrogate parent, the local educational agency shall select the surrogate parent of its choice. If the child is moved from the home of the relative caretaker or foster parent who has been appointed as a surrogate parent, the local educational agency shall appoint another surrogate parent.

(d) For the purposes of this section, the surrogate parent shall serve as the child's parent and shall have the rights relative to the child's education that a parent has under Title 20 (commencing with Section 1400) of the United States Code and pursuant to Part 300 of Title 34 (commencing with Section 300.1) of the Code of Federal Regulations. The surrogate parent may represent the child in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in all other matters relating to the provision of a free appropriate public education of the child. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to this chapter. The surrogate parent may sign any consent relating to individualized education program purposes.

(e) As far as practical, a surrogate parent should be culturally sensitive to his or her assigned child.

(f) Individuals who would have a conflict of interest in representing the child, as specified under federal regulations, shall not be appointed as a surrogate parent. "An individual who would have a conflict of interest," for purposes of this section, means a person having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure a free appropriate public education for an individual with exceptional needs, as defined in Section 56026 of the Education Code.

(g) Except for individuals who have a conflict of interest in representing the child, and notwithstanding any other law or regulation, individuals who may serve as surrogate parents include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers who are not employees of a public agency involved in the education or care of the child. The surrogate parent shall not be an employee of a public or private agency that is involved in the education or care of the child. If a conflict of interest arises subsequent to the appointment of the surrogate parent, the local educational agency shall terminate the appointment and appoint another surrogate parent.

(h) The surrogate parent and the local educational agency appointing the surrogate parent shall be held harmless by the State of California when acting in their official capacity except for acts or omissions that are found to have been wanton, reckless, or malicious.

(i) Nothing in this section shall be interpreted to prevent a parent or guardian of an individual with exceptional needs from designating another adult individual to represent the interests of the child for educational and related services.

(j) If funding for implementation of this section is provided, it may only be provided from Item 6110-161-890 of the annual Budget Act.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and involves only "costs mandated by the federal government," as defined by Section 17513 of the Government Code. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 490

An act to amend, repeal, and add Section 32320 of the Education Code, relating to education.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 32320 of the Education Code is amended to read:

32320. No state-owned college, university, or other school shall charge any tuition, or incidental fees to any of the following:

(a) Any dependent eligible to receive assistance under Article 2 (commencing with Section 890) of Chapter 4 of Division 4 of the Military and Veterans Code.

(b) Any child of any veteran of the United States military who has a service-connected disability, has been killed in service, or has died of a service-connected disability, where the annual income of the child, including the value of any support received from a parent, does not exceed five thousand dollars ($5,000).

(c) Notwithstanding Section 893 of the Military and Veterans Code, the Department of Veterans Affairs may determine the eligibility for fee waivers for a child described in subdivision (b).

(d) Any dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty, and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member

of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

Nothing contained in this section shall prevent the Regents of the University of California from charging to and collecting from nonresident students an admission fee and rate of tuition nor shall anything in this section prevent the charging and collecting of fees required of nonresident students admitted to schools under the jurisdiction of the State Department of Education or the Director of Education or to a state university under the jurisdiction of the Trustees of the California State University.

This section shall not apply to a dependent of a veteran within the meaning of paragraph (4) of subdivision (a) of Section 890 of the Military and Veterans Code.

(e) This section shall become inoperative on July 1, 1994, and as of January 1, 1995, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1995, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 32320 is added to the Education Code, to read:

32320. No state-owned college, university, community college, or other school shall charge any tuition or fees, including enrollment fees, registration fees, differential fees, or incidental fees to any of the following:

(a) Any dependent eligible to receive assistance under Article 2 (commencing with Section 890) of Chapter 4 of Division 4 of the Military and Veterans Code.

(b) Any child of any veteran of the United States military who has a service-connected disability, has been killed in service, or has died of a service-connected disability, where the annual income of the child, including the value of any support received from a parent, does not exceed seven thousand dollars ($7,000).

(c) Notwithstanding Section 893 of the Military and Veterans Code, the Department of Veterans Affairs may determine the eligibility for fee waivers for a child described in subdivision (b).

(d) Any dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty, and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

Nothing contained in this section shall prevent the Regents of the University of California from charging to and collecting from nonresident students an admission fee and rate of tuition nor shall anything in this section prevent the charging and collecting of fees required of nonresident students admitted to schools under the jurisdiction of the State Department of Education or the Director of Education or to a state university under the jurisdiction of the

Trustees of the California State University.

This section shall not apply to a dependent of a veteran within the meaning of paragraph (4) of subdivision (a) of Section 890 of the Military and Veterans Code.

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

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

CHAPTER 491

An act to add Section 11170.5 to the Penal Code, relating to child abuse reporting.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 11170.5 is added to the Penal Code, to read:

11170.5. (a) Notwithstanding paragraph (3) of subdivision (b) of Section 11170, the Department of Justice shall make available to a licensed adoption agency, as defined in Section 8530 of the Family Code, any information maintained in the child abuse index, pursuant to subdivision (a) of Section 11170, concerning any person who has submitted to the agency an application for adoption.

(b) Whenever information contained in the Department of Justice files is furnished as the result of an application for adoption pursuant to subdivision (a), the Department of Justice may charge the agency making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Sexual Habitual Offender Fund pursuant to paragraph (5) of subdivision (b) of Section 11170.

CHAPTER 492

An act to amend Sections 17310, 17331, 17332, 17336, 17348, and 17414 of, the Financial Code, relating to escrow.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 17310 of the Financial Code is amended to read:

17310. (a) It shall be the purpose of Fidelity Corporation to indemnify a member against loss, subject to the limitations set forth in this chapter.

(b) Fidelity Corporation shall not be liable for any consequential damages sustained by a member, or by any other person, nor for any punitive damages whatsoever.

(c) The indemnification shall be provided by any of the following:

(1) A fund established by Fidelity Corporation pursuant to Section 17320.

(2) A fidelity bond or insurance policy to be approved by the commissioner.

(3) A combination of paragraphs (1) and (2) subject, however, to the maximum coverage specified in subdivision (b) of Section 17314.

SEC. 2. Section 17331 of the Financial Code is amended to read:

17331. (a) Within 30 days following written notice by Fidelity Corporation to an escrow agent any shareholder, officer, director, trustee, manager, or employee of an escrow agent, directly or indirectly compensated by an escrow agent within this state, shall be required to apply for a Fidelity Corporation Certificate, prepared and issued by Fidelity Corporation, as a condition of their employment or entitlement to compensation, before the person may continue the regular discharge of their duties, or have access to moneys or negotiable securities belonging to or in the possession of the escrow agent, or draw checks upon the escrow agent or the trust funds of the escrow agent.

(b) Within 60 days of the effective date of this section, each member shall provide Fidelity Corporation with a list of all shareholders, officers, directors, trustees, managers, and employees or other persons, on the form prescribed by Fidelity Corporation.

(c) Fidelity Corporation Certificates may also be known as Escrow Agents' Fidelity Corporation Certificates or EAFC Certificates. The certificate shall at all times remain the property of Fidelity Corporation, and shall be held by a member for the benefit of an employee, but is not issued personally to the employee, is not transferable by either a member or employee, and shall be returned to Fidelity Corporation by the member upon termination of an employee or upon written demand by Fidelity Corporation. The

certificate shall not be deemed to be, or construed as, a warranty or guarantee by Fidelity Corporation of the integrity, veracity, or competence of the person.

(d) An application for a Fidelity Corporation Certificate shall be in writing and in such form as prescribed by Fidelity Corporation, and may include (1) a fee not to exceed fifty dollars ($50), (2) two passport-size photographs, and (3) a set of fingerprints on the form established by the Department of Justice for requesting state summary criminal history information plus the fee charged by the Department of Justice for processing noncriminal applicant fingerprints. The Department of Justice shall honor the Fidelity Corporation report request form and issue a report to Fidelity Corporation notwithstanding any other provision of law or regulation to the contrary. Fidelity Corporation shall also be entitled to submit a set of fingerprints on the specified noncriminal applicant fingerprint form for the purpose of requesting and obtaining a report from the Department of Justice, for the officers and employees of Fidelity Corporation. Any member shall cause the filing of applications for all existing employees as required by this section within 30 days of written notice by Fidelity Corporation to the member.

(e) The application form shall include a provision for binding arbitration, which shall be set out in at least 8-point type, to allow for arbitration of any appeal or dispute as to any decision by Fidelity Corporation concerning the certificate, as follows:

ANY DISPUTE AS TO WHETHER THE DENIAL OF THIS CERTIFICATE APPLICATION IS UNNECESSARY OR UNAUTHORIZED OR WAS IMPROPERLY, NEGLIGENTLY, OR UNLAWFULLY RENDERED, MAY BE DETERMINED BY SUBMISSION TO ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND NOT BY A LAWSUIT OR RESORT TO COURT PROCESS EXCEPT AS CALIFORNIA LAW PROVIDES FOR JUDICIAL REVIEW OF ARBITRATION PROCEEDINGS OR EXCEPT AS PROVIDED BY SECTION 17331.3 OF THE FINANCIAL CODE. THE APPLICANT MAY, SUBJECT TO AGREEMENT, SUBMIT ANY ISSUE ARISING FROM ANY DECISION BY FIDELITY CORPORATION TO DENY THIS CERTIFICATE APPLICATION TO BE DECIDED BY BINDING NEUTRAL ARBITRATION. UPON SUCH AGREEMENT, THE APPLICANT HAS NO RIGHTS TO HAVE ANY DISPUTE CONCERNING THIS CERTIFICATE APPLICATION LITIGATED IN A COURT OR JURY TRIAL NOR ANY JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, EXCEPT AS SPECIFICALLY PROVIDED IN THE ESCROW LAW, AND ARBITRATION MAY BE COMPELLED AS PROVIDED BY LAW.

(f) The certificate form shall contain a provision for arbitration for any appeal or dispute as to any decision by Fidelity Corporation

concerning the certificate as follows:

ANY DISPUTE AS TO WHETHER THE SUSPENSION OR REVOCATION OF THIS CERTIFICATE BY FIDELITY CORPORATION IS UNNECESSARY OR UNAUTHORIZED OR WAS IMPROPERLY, NEGLIGENTLY, OR UNLAWFULLY RENDERED, MAY BE DETERMINED BY SUBMISSION TO ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND NOT BY A LAWSUIT OR RESORT TO COURT PROCESS EXCEPT AS CALIFORNIA LAW PROVIDES FOR JUDICIAL REVIEW OF ARBITRATION PROCEEDINGS OR EXCEPT AS PROVIDED BY SECTION 17331.3 OF THE FINANCIAL CODE. THE PERSON TO WHOM THIS CERTIFICATE HAS BEEN ISSUED MAY, SUBJECT TO AGREEMENT, SUBMIT ANY ISSUE ARISING FROM ANY DECISION BY FIDELITY CORPORATION TO EITHER SUSPEND OR REVOKE THIS CERTIFICATE TO BE DECIDED BY BINDING NEUTRAL ARBITRATION. UPON SUCH AGREEMENT, THE PERSON TO WHOM THE CERTIFICATE IS ISSUED HAS NO RIGHTS TO HAVE ANY DISPUTE CONCERNING THIS CERTIFICATE LITIGATED IN A COURT OR JURY TRIAL NOR ANY JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, EXCEPT AS SPECIFICALLY PROVIDED IN THE ESCROW LAW, AND ARBITRATION MAY BE COMPELLED AS PROVIDED BY LAW.

(g) There shall be no liability on the part of and no cause of action of any nature shall arise against Fidelity Corporation or its members, directors, officers, employees, or agents, the State of California, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations for any statements made by Fidelity Corporation in any reports or recommendations made pursuant to this division, or for any reports or recommendations made pursuant to this division to Fidelity Corporation by its members, directors, officers, employees or agents, the State of California, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations, unless the information provided is false and the party making the statement or providing the false information does so with knowledge and malice. Reports or recommendations made pursuant to this section, or Section 17331.1, 17331.2, or 17331.3 shall not be public documents.

(h) There shall be no liability on the part of and no cause of action of any nature shall arise against Fidelity Corporation or its members, directors, officers, employees, or agents, the State of California, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations for the release of any information furnished to Fidelity Corporation pursuant to this section unless the information released is false and the party, including Fidelity Corporation, its members, directors, officers,

employees, or agents, the state, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations, who releases the false information does so with knowledge and malice.

(i) There shall be no liability on the part of and no cause of action of any nature shall arise against Fidelity Corporation or its directors, officers, employees, or agents, for any decision to deny an application for a certificate or to suspend or revoke the certificate of any person or for the timing of any decision or the timing of any notice to persons or members thereof, or for any failure to deny an application under subdivision (a) of Section 17331.2. This subdivision does not apply to acts performed in bad faith or with malice.

(j) Fidelity Corporation, any member of Fidelity Corporation, an agent of Fidelity Corporation or of its members, or any person who uses any information obtained under this section for any purpose not authorized by this chapter is guilty of a misdemeanor.

(k) Section 17331, 17331.1, or 17331.2 shall not constitute a restriction or limitation upon the obligation of Fidelity Corporation to indemnify members against loss, as provided in Sections 17310 and 17314. The failure to obtain a certificate, the denial of an application for a certificate, or the suspension, cancellation, or revocation of a certificate shall not limit the obligation of Fidelity Corporation to indemnify a member against loss.

(*l*) As of January 1, 1992, notwithstanding Section 11105 of the Penal Code, Fidelity Corporation shall be entitled to receive state summary criminal history information and subsequent arrest notification from the Department of Justice as a result of fingerprint cards submitted to the Department of Justice by the Department of Corporations, pursuant to subdivision (g) of Section 17209, Section 17212.1, and subdivision (d) of Section 17414.1, by or on behalf of escrow agents, shareholders, officers, directors, trustees, managers, or employees of an escrow agent, directly or indirectly compensated by an escrow agent. The Department of Justice and Fidelity Corporation shall enter into an agreement to implement this subdivision. The Department of Corporations shall forward to Fidelity Corporation, weekly, a list of names of individual fingerprints submitted to the Department of Justice.

SEC. 3. Section 17332 of the Financial Code is amended to read:

17332. When either Fidelity Corporation or the insurer providing the fidelity bond or insurance policy, if any, under Section 17310, or both, pay an obligation on behalf of a member, Fidelity Corporation and the insurer shall be subrogated to the rights, claims, and remedies of the member up to the amount paid by Fidelity Corporation and the insurer on behalf of the member. In any subrogation action filed by Fidelity Corporation, the provider of the fidelity bond or insurance policy if payment was made thereunder, or both, Fidelity Corporation shall have the first right to the proceeds of any judgment or settlement obtained against the principal obligors and any other party who is held liable jointly or severally,

in whole or in part, with the principal obligors, up to the amount actually paid on the claim by Fidelity Corporation. Fidelity Corporation and the insurer, as subrogees, shall also recover in the subrogation action reasonable costs and attorney's fees which may be awarded either as part of any judgment or as an item of costs, as provided for in paragraph (10) of subdivision (a) and paragraph (5) of subdivision (c) of Section 1033.5 of the Code of Civil Procedure. No member engaged in business pursuant to Section 17200 shall be required to pay those costs and attorney's fees awarded pursuant to this section. Amounts recouped by Fidelity Corporation through subrogation, minus all costs, attorney's fees, and other administrative expenses incurred in obtaining that recovery, shall be credited to the fidelity fund.

SEC. 4. Section 17336 of the Financial Code is amended to read:

17336. (a) Fidelity Corporation shall have independent authority to investigate claims filed by members pursuant to Section 17330.

(b) Fidelity Corporation, upon submitting written notice to the commissioner, may conduct an examination or investigation of the business practices of a member's handling and processing of trust obligations or the failure to pay an assessment under Section 17320, 17321, or 17321.1. The result of every investigation or examination shall be reported to the commissioner together with the recommendations of the Board of Directors of Fidelity Corporation. The investigation or examination reports prepared by the duly designated representatives of the board of the Escrow Agents' Fidelity Corporation shall not be public records.

(c) Fidelity Corporation may submit reports and make recommendations to a member on its findings as a result of an examination or investigation conducted pursuant to this section. These reports and recommendations shall not be public documents. A copy of all reports and recommendations shall be furnished to the commissioner by Fidelity Corporation. There shall be no liability on the part of, and no cause of action of any nature shall arise against, Fidelity Corporation or its members, directors, officers, employees, stockholders, or agents or the commissioner or commissioner's authorized representatives for any statements made by them in any reports or recommendations made hereunder.

(d) Fidelity Corporation, upon the request of the commissioner, may participate in an examination or investigation of the books and records of a member. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the commissioner, or members of the commissioner's staff or the commissioner's authorized representative for the release of any information furnished to Fidelity Corporation pursuant to this subdivision.

(e) With the written consent of a majority of its directors, Fidelity Corporation, in order to fulfill its obligations under this section, may appoint an independent certified public accountant or public

accountant or hire or appoint a specialized committee or employees to conduct an examination or investigation authorized by this section. Any reports as a result thereof shall be furnished to the commissioner pursuant to the provisions of subdivision (c).

(f) For the purposes of conducting an examination or investigation, Fidelity Corporation or its appointee shall have free access to the offices and places of business, books, accounts, bank account records and statements, papers, records, files, safes and vaults of the member.

(g) Fidelity Corporation may cause an examination or audit of the places of business, books, accounts, bank account records, papers, records, files, safes and vaults of a member to be conducted in accordance with Fidelity Corporation's bylaws and rules.

(h) Costs and expenses for the examination or investigation conducted pursuant to subdivision (b) shall be paid to the Fidelity Corporation by the licensee, its shareholders, directors, and officers, or person examined, each of whom shall be jointly and severally liable therefor. The Fidelity Corporation may maintain an action for recovery of these costs in any court of competent jurisdiction, and shall recover its reasonable costs and attorney's fees as an item of costs as provided for in paragraph (10) of subdivision (a) and paragraph (5) of subdivision (c) of Section 1033.5 of the Code of Civil Procedure, provided that the payment of the costs and attorney's fees will not cause the member to be in violation of Section 17202, 17202.1, or 17210.

(i) Fidelity Corporation, any member of Fidelity Corporation, an agent of Fidelity Corporation or of its members, or any person who uses any information obtained under this section for any purpose not authorized herein is guilty of a misdemeanor.

(j) Fidelity Corporation may cause an examination or audit of a member, to be conducted in accordance with Fidelity Corporation's Bylaws and Rules, whenever:

(1) The member has failed to pay an assessment as provided for under Section 17320, 17321, or 17321.1.

(2) Fidelity Corporation has received any information of irregular or improper handling of the trust obligations of the member or of an occurrence which may give rise to a claim for loss of trust obligations.

(3) Fidelity Corporation so elects, either with or without notice.

(k) Costs and expenses for any examination under this section shall be paid for by the member. Fidelity Corporation shall also be entitled to recover costs and expenses for any examination under this section from those persons, if any, who are discovered to be responsible for, or to have caused, any irregular or improper handling of trust obligations of the member or any occurrence which may give rise to a claim for loss of trust obligations, or otherwise by failure to cooperate, unnecessarily increase the cost of the examination. Fidelity Corporation may maintain an action for recovery of these examination costs and expenses in any court of competent jurisdiction, and shall recover its reasonable costs and

attorney's fees as an item of costs, as provided for in paragraph (10) of subdivision (a) and paragraph (5) of subdivision (c) of Section 1033.5 of the Code of Civil Procedure, provided that the payment of the costs and attorney's fees will not cause the member to be in violation of Section 17202, 17202.1, or 17210.

SEC. 5. Section 17348 of the Financial Code is amended to read:

17348. In order to permit Fidelity Corporation to fulfill its obligation under this chapter, the commissioner shall furnish a list of all persons licensed under this division as of December 31 of each year and a copy of an escrow liability schedule filed with the commissioner. Each member on or before February 15 shall furnish to the commissioner and Fidelity Corporation the schedule of its escrow liability for each of its licensed locations as of the last day of each month for the preceding 12 months which ended December 31. A list of officers, directors, stockholders, trustees, agents, managers, and employees as of that date shall also be submitted to Fidelity Corporation, with the schedule. The schedule shall be in the form and contain such information as the commissioner may require.

SEC. 6. Section 17414 of the Financial Code is amended to read:

17414. (a) It is a violation for any person subject to this division or any director, stockholder, trustee, officer, agent, or employee of any such person to do any of the following:

(1) Knowingly or recklessly disburse or cause the disbursal of escrow funds otherwise than in accordance with escrow instructions, or knowingly or recklessly to direct, participate in, or aid or abet in a material way, any activity which constitutes theft or fraud in connection with any escrow transaction.

(2) Knowingly or recklessly make or cause to be made any misstatement or omission to state a material fact, orally or in writing, in escrow books, accounts, files, reports, exhibits, statements, or any other document pertaining to an escrow or escrow affairs.

(b) Any director, officer, stockholder, trustee, employee, or agent of an escrow agent, who abstracts or willfully misappropriates money, funds, trust obligations or property deposited with an escrow agent, is guilty of a felony. Upon conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution, first to the escrow agent and then to Fidelity Corporation, to the extent it has indemnified the escrow agent. Nothing in this section shall be deemed or construed to repeal, amend, or impair any existing provision of law prescribing a punishment for such an offense.

(c) Any person subject to this division who knows or should have known of a person's involvement in an abstraction or misappropriation of money, funds, trust obligations, or property deposited with a licensed escrow agent shall immediately report the abstraction or misappropriation in writing to the commissioner and to Fidelity Corporation. No person shall be civilly liable for reporting as required under this subdivision, unless the information provided in the report is false and the person providing false information does

so with knowledge and malice. The reports filed under this section, including the identity of the person making the filing, shall remain confidential pursuant to state law.

CHAPTER 493

An act to amend Section 11020 of the Government Code, relating to state government.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 11020 of the Government Code is amended to read:

11020. (a) Unless otherwise provided by law, all offices of every state agency shall be kept open for the transaction of business from 8 a.m. until 5 p.m. of each day from Monday to Friday, inclusive, other than legal holidays, but the office of Treasurer shall close one hour earlier. However, any state agency or division, branch or office thereof may be kept open for the transaction of business on other hours and on other days than those specified in this subdivision.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(c) Subdivision (a) shall not apply to any fair or association specified under Division 3 (commencing with Section 3001) of the Food and Agricultural Code.

CHAPTER 494

An act to amend Section 9002 of the Family Code, relating to family law.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 9002 of the Family Code, as amended by Section 205 of Chapter 219 of the Statutes of 1993, is amended to read:

9002. In a stepparent adoption, the stepparent is liable for all reasonable costs incurred in connection with the stepparent adoption, including, but not limited to, costs incurred for the investigation required by Section 9001, up to a maximum of seven hundred dollars ($700). The court, probation officer, qualified court investigator, or county welfare department may defer, waive, or reduce the fee if its payment would cause economic hardship to the prospective adoptive parent detrimental to the welfare of the adopted child.

CHAPTER 495

An act to amend Sections 211 and 4660 of, and to add Section 1007.5 to, the Public Utilities Code, relating to carriers.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 211 of the Public Utilities Code is amended to read:

211. "Common carrier" means every person and corporation providing transportation for compensation to or for the public or any portion thereof, except as otherwise provided in this part.

"Common carrier" includes:

(a) Every railroad corporation; street railroad corporation; express corporation; freight forwarder; dispatch, sleeping car, dining car, drawing-room car, freight, freightline, refrigerator, oil, stock, fruit, car-loaning, car-renting, car-loading, and every other car corporation or person operating for compensation within this state.

(b) Every corporation or person, owning, controlling, operating, or managing any vessel used in the transportation of persons or property for compensation between points upon the inland waters of this state or upon the high seas between points within this state, except as provided in Section 212. "Inland waters" as used in this section includes all navigable waters within this state other than the high seas.

(c) Every "passenger stage corporation" operating within this state.

(d) Every highway common carrier and cement carrier operating within this state.

SEC. 2. Section 1007.5 is added to the Public Utilities Code, to read:

1007.5. The commission, in the exercise of the jurisdiction conferred upon it by the Constitution of the state and by this part, and consistent with Section 9 of Article I of the California Constitution and Section 10 of Article 1 of the United States

Constitution, may grant certificates of public convenience and necessity, make decisions and orders, and prescribe rules affecting vessel common carriers notwithstanding the provisions of any ordinance, permit, or franchise of any city, county, or other political subdivision of this state, and in the case of conflict between any certificate, decision, order, or rule of the commission and any ordinance, permit, or franchise, the certificate, decision, order, or rule of the commission shall prevail.

SEC. 3. Section 4660 of the Public Utilities Code is amended to read:

4660. As used in this chapter, "for-hire vessel operator" means any person owning, controlling, operating, or managing a for-hire vessel for the transportation of persons for compensation in this state, except a common carrier by vessel as defined in subdivision (b) of Section 211. Nothing in this section shall exempt those common carriers by vessel excepted from this section from any insurance requirements required by the commission for common carriers as defined in subdivision (b) of Section 211.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 496

An act to amend and repeal Section 20499.5 of, and to add and repeal Section 20864.6 of, the Government Code, relating to the Public Employees' Retirement System, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 20499.5 of the Government Code is amended to read:

20499.5. (a) Notwithstanding any other provision of this part, a contracting agency, county superintendent of schools, school district, or community college district, that is forced to reduce the compensation of its employees as a direct result of a fiscal emergency may, pursuant to this section and in a manner prescribed by the

board, preserve the retirement benefits of its employees at a level no lower than that achieved prior to the reduction. The operative date of the benefit adjustments shall be the date of adoption of this section by the governing body or the first day of the pay period in which the reduction occurred but not earlier than July 1, 1992.

(b) This section shall not apply to any contracting agency, county superintendent of schools, school district, or community college district unless and until its governing body adopts a resolution, in a form provided by the board, to be subject to it and a copy is filed with the system.

(c) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is chaptered before that date, deletes or extends that date.

SEC. 2. Section 20864.6 is added to the Government Code, to read:

20864.6. For all retirement purposes including benefit eligibility and calculations of retirement allowances for school employees in a personal leave program, credit for service shall be based on the amount of service that would have been credited had the employee not been in a personal leave program.

This section shall not apply to any county superintendent of schools, school district, or community college district unless and until its governing body adopts a resolution, in a form provided by, and under the conditions imposed by, the board, to be subject to this section, and a copy thereof is filed with the system.

This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, that is chaptered before that date, deletes or extends that date.

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

In order that unintended and unfair effects of personnel actions taken by local public educational entities in response to fiscal emergencies, upon retirement benefits of school members of the Public Employees' Retirement System may be remedied at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 497

An act to amend Section 51226.3 of the Education Code, relating to education.

[Approved by Governor September 25, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 51226.3 of the Education Code is amended to read:

51226.3. (a) The State Department of Education shall incorporate, into publications that provide examples of curriculum resources for teacher use, those materials developed by publishers of nonfiction, trade books, and primary sources, or other public or private organizations, that are age-appropriate and consistent with the subject frameworks on history and social science that deal with civil rights, human rights violations, genocide, slavery, and the Holocaust.

(b) The Legislature encourages all state and local professional development activities to provide teachers with content background and resources to assist in teaching about civil rights, human rights violations, genocide, slavery, and the Holocaust.

CHAPTER 498

An act to add Section 6379.8 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 6379.8 is added to the Revenue and Taxation Code, to read:

6379.8. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, mailing lists, if the contract regarding that mailing list restricts the purchaser to a single use of the mailing list.

(b) For purposes of this section, "mailing list" means a written or printed list, series, set, group, or aggregation of names and addresses of, and occasionally, other information concerning persons, including, but not limited to, potential customers or donors, that is intended for use in circulating material by mail. A mailing list may be in the form of a manuscript list, directory, Cheshire tape, Dick

tape, gummed labels, index cards, or other similar means of communication. "Mailing list" also includes a magnetic tape or similar device used to produce written or printed names and addresses by electronic or mechanical means.

SEC. 2. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 499

An act to add Section 830.14 to the Penal Code, relating to regional transit services law enforcement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 830.14 is added to the Penal Code, to read:

830.14. (a) A local or regional transit agency or a joint powers agency operating rail service identified in an implementation program adopted pursuant to Article 10 (commencing with Section 130450) of Chapter 4 of Division 12 of the Public Utilities Code may authorize by contract designated persons as conductors performing fare inspection duties who are employed by a railroad corporation that operates public rail commuter transit services for that agency to act as its agent in the enforcement of subdivisions (a) and (b) of Section 640 relating to the operation of the rail service if they complete the training requirement specified in subdivision (c).

(b) Persons authorized pursuant to this section to enforce subdivisions (a) and (b) of Section 640 shall complete a specialized fare compliance course which shall be provided by the authorizing agency. This training course shall include, but not be limited to, the following topics:

(1) An overview of barrier-free fare inspection concepts.

(2) The scope and limitations of inspector authority.

(3) Familiarization with the elements of the infractions enumerated in subdivision (a).

(4) Techniques for conducting fare checks, including, inspection procedures, demeanor, and contacting violators.

(5) Citation issuance and court appearances.

(6) Fare media recognition.

(7) Handling argumentative violators and diffusing conflict.

(8) The mechanics of law enforcement support and interacting with law enforcement for effective incident resolution.

(c) Persons described in subdivision (a) are public officers, not peace officers, have no authority to carry firearms or any other weapon while performing the duties authorized in this section, and may not exercise the powers of arrest of a peace officer while performing the duties authorized in this section. These persons may be authorized by the agency to issue citations involving infractions relating to the operation of the rail service specified in subdivision (a).

(d) Nothing in this section shall affect the retirement or disability benefits provided to employees described in subdivision (a) or be in violation of any collective bargaining agreement between a labor organization and a railroad corporation.

(e) Notwithstanding any other provision of this section, the primary responsibility of a conductor of a commuter passenger train shall be functions related to safe train operation.

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

Regional transit services have begun, and in order to enforce fare ordinance laws as efficiently and as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 500

An act to amend Section 66412.6 of, and to amend and repeal Section 66499.35 of, the Government Code, relating to subdivisions.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 66412.6 of the Government Code, as amended by Section 1 of Chapter 1041 of the Statutes of 1988, is amended to read:

66412.6. (a) For purposes of this division or of a local ordinance enacted pursuant thereto, any parcel created prior to March 4, 1972, shall be conclusively presumed to have been lawfully created if at the time of the creation of the parcel there was compliance with any local ordinance or there was no local ordinance in effect which regulated divisions of land creating fewer than five parcels.

(b) For purposes of this division or of a local ordinance enacted pursuant thereto, any parcel created prior to March 4, 1972, shall be

conclusively presumed to have been lawfully created if any subsequent purchaser acquired that parcel for valuable consideration without actual or constructive knowledge of a violation of this division or the local ordinance. Owners of parcels or units of land affected by the provisions of this subdivision shall be required to obtain a certificate of compliance or a conditional certificate of compliance pursuant to Section 66499.35 prior to obtaining a permit or other grant of approval for development of the parcel or unit of land. For purposes of determining whether the parcel or unit of land complies with the provisions of this division and of local ordinances enacted pursuant thereto, as required pursuant to subdivision (a) of Section 66499.35, the presumption declared in this subdivision shall not be operative.

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

SEC. 2. Section 66412.6 of the Government Code, as added by Section 2 of Chapter 1041 of the Statutes of 1988, is amended to read:

66412.6. (a) For purposes of this division or of a local ordinance enacted pursuant thereto, any parcel created prior to March 4, 1972, shall be conclusively presumed to have been lawfully created if the parcel resulted from a division of land in which fewer than five parcels were created and if at the time of the creation of the parcel, there was no local ordinance in effect which regulated divisions of land creating fewer than five parcels.

(b) For purposes of this division or of a local ordinance enacted pursuant thereto, any parcel created prior to March 4, 1972, shall be conclusively presumed to have been lawfully created if any subsequent purchaser acquired that parcel for valuable consideration without actual or constructive knowledge of a violation of this division or the local ordinance. Owners of parcels or units of land affected by the provisions of this subdivision shall be required to obtain a certificate of compliance or a conditional certificate of compliance pursuant to Section 66499.35 prior to obtaining a permit or other grant of approval for development of the parcel or unit of land. For purposes of determining whether the parcel or unit of land complies with the provisions of this division and of local ordinances enacted pursuant thereto, as required pursuant to subdivision (a) of Section 66499.35, the presumption declared in this subdivision shall not be operative.

(c) This section shall become operative January 1, 1995.

SEC. 3. Section 66499.35 of the Government Code, as amended by Section 4 of Chapter 1041 of the Statutes of 1988, is amended to read:

66499.35. (a) Any person owning real property or a vendee of that person pursuant to a contract of sale of the real property may request, and a local agency shall determine, whether the real property complies with the provisions of this division and of local ordinances enacted pursuant thereto. Upon making the

determination, the city or the county shall cause a certificate of compliance to be filed for record with the recorder of the county in which the real property is located. The certificate of compliance shall identify the real property and shall state that the division thereof complies with applicable provisions of this division and of local ordinances enacted pursuant thereto. The local agency may impose a reasonable fee to cover the cost of issuing and recording the certificate of compliance.

(b) If a local agency determines that the real property does not comply with the provisions of this division or of local ordinances enacted pursuant thereto, it shall issue a certificate of compliance or a conditional certificate of compliance. A local agency may, as a condition to granting a certificate of compliance, impose any conditions which would have been applicable to the division of the property at the time the applicant acquired his or her interest therein, and which had been established at that time by this division or local ordinance enacted pursuant thereto, except that where the applicant was the owner of record at the time of the initial violation of the provisions of this division or of local ordinances enacted pursuant thereto who by a grant of the real property created a parcel or parcels in violation of this division or local ordinances enacted pursuant thereto, and the person is the current owner of record of one or more of the parcels which were created as a result of the grant in violation of the division or local ordinances enacted pursuant thereto, then the local agency may impose any conditions which would be applicable to a current division of the property. Upon making the determination and establishing the conditions the city or county shall cause a conditional certificate of compliance to be filed for record with the recorder of the county in which the real property is located. The certificate shall serve as notice to the property owner or vendee who has applied for the certificate pursuant to this section, a grantee of the property owner, or any subsequent transferee or assignee of the property that the fulfillment and implementation of these conditions shall be required prior to subsequent issuance of a permit or other grant of approval for development of the property.

Compliance with these conditions shall not be required until the time which a permit or other grant of approval for development of the property is issued by the local agency.

(c) A certificate of compliance shall be issued for any real property which has been approved for development pursuant to Section 66499.34.

(d) A recorded final map, parcel map, official map, or an approved certificate of exception shall constitute a certificate of compliance with respect to the parcels of real property described therein.

(e) An official map prepared pursuant to subdivision (b) of Section 66499.52 shall constitute a certificate of compliance with respect to the parcels of real property described therein and may be filed for record, whether or not the parcels are contiguous, so long

as the parcels are within the same section or, with the approval of the city engineer or county surveyor, within contiguous sections of land.

SEC. 4. Section 66499.35 of the Government Code, as added by Section 5 of Chapter 1041 of the Statutes of 1988, is repealed.

CHAPTER 501

An act to amend Sections 99314.6 and 99314.7 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 99314.6 of the Public Utilities Code is amended to read:

99314.6. Except as provided in Section 99314.7, the following eligibility standards apply:

(a) Except as provided in subdivision (b), funds shall not be allocated for operating purposes pursuant to Sections 99313 and 99314 to an operator unless the operator meets either of the following efficiency standards:

(1) The operator's total operating cost per revenue vehicle hour in the latest year for which audited data are available does not exceed the sum of the preceding year's total operating cost per revenue vehicle hour and an amount equal to the product of the percentage change in the Consumer Price Index for the same period multiplied by the preceding year's total operating cost per revenue vehicle hour.

(2) The operator's average total operating cost per revenue vehicle hour in the latest three years for which audited data are available does not exceed the sum of the average of the total operating cost per revenue vehicle hour in the three years preceding the latest year for which audited data are available and an amount equal to the product of the average percentage change in the Consumer Price Index for the same period multiplied by the average total operating cost per revenue vehicle hour in the same three years.

(b) The transportation planning agency, county transportation commission, or the San Diego Metropolitan Transit Development Board, as the case may be, may adjust the calculation of operating costs and revenue vehicle hours pursuant to subdivision (a) to account for either or both of the following factors as it deems appropriate to encourage progress in achieving the objectives of efficiency, effectiveness, and productivity pursuant to Section 99244:

(1) Exclusion of costs increases beyond the change in the Consumer Price Index for fuel, alternative fuel programs, insurance,

or state or federal mandates.

(2) Exclusion of startup costs for new services for a period of not more than two years.

(c) Funds withheld from allocation to an operator pursuant to subdivision (a) shall be retained by the transportation planning agency, county transportation commission, or the San Diego Metropolitan Transit Development Board, as the case may be, for reallocation to that operator for two years following the year of ineligibility. In a year in which an operator's funds are fully allocated pursuant to subdivision (a), funds withheld from allocation during a preceding year shall also be fully allocated. Funds not allocated before the commencement of the third year following the year of ineligibility shall be reallocated to cost-effective high priority regional transit activities, as determined by the transportation planning agency, county transportation commission, or the San Diego Metropolitan Transit Development Board, as the case may be. If that agency or commission, or the board, determines that no cost-effective high priority regional transit activity exists, the unallocated funds shall revert to the Controller for reallocation.

(d) As used in this section, the following terms have the following meanings:

(1) "Operating cost" means the total operating cost as reported by the operator under the Uniform System of Accounts and Records, pursuant to Section 99243 and subdivision (a) of Section 99247.

(2) "Revenue vehicle hours" has the same meaning as "vehicle service hours," as defined in subdivision (h) of Section 99247.

(3) "Consumer Price Index," as applied to an operator, is the regional Consumer Price Index for that operator's region, as published by the United States Bureau of Labor Statistics. If a regional index is not published, the index for the State of California applies.

(4) "New service" has the same meaning as "extension of public transportation services" as defined in Section 99268.8.

SEC. 2. Section 99314.7 of the Public Utilities Code is amended to read:

99314.7. (a) In allocating funds for operating purposes pursuant to Sections 99313 and 99314, the Metropolitan Transportation Commission shall apply the following eligibility standards to the operators within the region subject to its jurisdiction:

(1) An operator is not eligible for its full allocation under this section unless the operator has been found to have made reasonable effort in implementing productivity improvements pursuant to Section 99244. In determining whether a reasonable effort has been made, the Metropolitan Transportation Commission shall give consideration to whether the operator would qualify for funding under Section 99314.6. The amount of funds allocated shall be reduced in an amount that the Metropolitan Transportation Commission deems proportionate to the failure of the operator to implement the recommended improvements. The Metropolitan

Transportation Commission shall adopt rules and regulations, in cooperation with the affected operators, governing the allocation of any funds withheld under this paragraph, subject to paragraphs (2) and (3).

(2) Notwithstanding paragraph (1), an operator shall not receive any funds pursuant to Section 99313 or 99314 unless it has complied with the applicable rules and regulations adopted by the Metropolitan Transportation Commission pursuant to Section 66516 of the Government Code.

(3) Funds withheld from allocation to an operator pursuant to paragraph (1) shall be retained by the Metropolitan Transportation Commission for reallocation to that operator for two years following the year of ineligibility. With respect to the funds withheld from an operator pursuant to paragraph (1), the Metropolitan Transportation Commission shall reallocate those funds to the operator if the operator complies with that paragraph within two years. Funds not reallocated to the operator, and funds withheld pursuant to paragraph (2), shall be allocated to any eligible operator within the region subject to the jurisdiction of the Metropolitan Transportation Commission for the purpose of improving coordination among the operators, or to any operator whose increase in total operating cost per revenue vehicle hour is less than the increase in the Consumer Price Index. Funds allocated for these purposes are exempt from subdivision (a).

(b) For purposes of this section, "operating cost," "revenue vehicle hour," and "Consumer Price Index" have the same meaning as defined in Section 99314.6.

CHAPTER 502

An act to amend Section 1203.1b of the Penal Code, relating to probation.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 1203.1b of the Penal Code, as amended by Chapter 158 of the Statutes of 1993, is amended to read:

1203.1b. (a) In any case in which a defendant is convicted of an offense and is the subject of any preplea or presentence investigation and report, whether or not probation supervision is ordered by the court, and in any case in which a defendant is granted probation, the probation officer, or his or her authorized representative, taking into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, shall make a recommendation to the court of the ability of the defendant to pay all or a portion of the

reasonable cost of any probation supervision, of conducting any preplea investigation and preparing any preplea report pursuant to Section 131.3 of the Code of Civil Procedure, and of conducting any presentence investigation and preparing any presentence report made pursuant to Section 1203, whichever applies. The reasonable cost of these services and of probation supervision shall not exceed the amount determined to be the actual average cost thereof. A payment schedule for the reimbursement of the costs of preplea or presentence investigations based on income shall be developed by the probation department of each county and approved by the presiding judges of the municipal and superior courts. The court shall order the defendant to appear before the probation officer, or his or her authorized representative, to make an inquiry into the ability of the defendant to pay all or a portion of these costs. The probation officer, or his or her authorized representative, shall recommend to the court the amount of payment and the manner in which the payments shall be made to the county, based upon the defendant's ability to pay and shall inform the defendant that the recommendation is not final until ordered by the court and that the defendant is entitled to a hearing if the defendant does not agree with the recommendation.

(b) When the defendant agrees with the recommendation of the probation officer, or his or her authorized representative, the probation officer shall forward the recommendation for affirmation by the court. If the defendant does not agree with the recommendation of the probation officer, or upon its own motion, the court shall schedule a hearing to determine the amount of payment and the manner in which the payments shall be made. The court shall order the defendant to pay the reasonable costs if it determines that the defendant has the ability to pay those costs based on the payment schedule and the report of the probation officer, or his or her authorized representative. The following shall apply to a hearing conducted pursuant to this subdivision:

(1) At the hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, and to confront and cross-examine adverse witnesses, and to disclosure of the evidence against the defendant, and a written statement of the findings of the court or the probation officer, or his or her authorized representative.

(2) At the hearing, if the court determines that the defendant has the ability to pay all or part of the costs, the court shall do either of the following:

(A) Set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability.

(B) With the consent of the defendant, the court shall order the probation officer to set the amount of payment, which shall not exceed the maximum amount set by the court, and the manner in

which the payment shall be made to the county.

(3) At the hearing, in making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

(4) When the court determines that the defendant's ability to pay is different from the recommendation of the probation officer, the court shall state on the record the reason for its order.

(c) The court may hold additional hearings during the probationary period to review the defendant's financial ability to pay the amount, and in the manner, as set by the probation officer, or his or her authorized representative, or as set by the court pursuant to this section.

(d) If practicable, the court shall order or the probation officer shall recommend payments pursuant to subdivisions (a) and (b) to be made on a monthly basis. Execution may be issued on the order issued pursuant to this section in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

(e) The term "ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the preplea or presentence report, and probation supervision, and shall include, but shall not be limited to, the defendant's:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the defendant shall be able to obtain employment within the six-month period from the date of the hearing.

(4) Any other factor or factors that may bear upon the defendant's financial capability to reimburse the county for the costs.

(f) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the probation officer for a review of the defendant's financial ability to pay or the rendering court to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment. The probation officer and the court shall advise the defendant of this right at the time of rendering of the terms of probation or the judgment.

(g) All sums paid by a defendant pursuant to this section shall be allocated for the operating expenses of the county probation department.

(h) The board of supervisors in any county, by resolution, may establish a fee for the processing of payments made in installments to the probation department pursuant to this section, not to exceed

the administrative and clerical costs of the collection of those installment payments as determined by the board of supervisors, except that the fee shall not exceed thirty-five dollars ($35).

(i) This section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors.

SEC. 2. Section 1203.1b of the Penal Code, as amended by Chapter 158 of the Statutes of 1993, is amended to read:

1203.1b. (a) In any case in which a defendant is convicted of an offense and is the subject of any preplea or presentence investigation and report, whether or not probation supervision is ordered by the court, and in any case in which a defendant is granted probation, the probation officer, or his or her authorized representative, taking into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, shall make a recommendation to the court of the ability of the defendant to pay all or a portion of the reasonable cost of any probation supervision, of conducting any preplea investigation and preparing any preplea report pursuant to Section 131.3 of the Code of Civil Procedure, of conducting any presentence investigation and preparing any presentence report made pursuant to Section 1203, and of processing a jurisdictional transfer pursuant to Section 1203.9 or of processing a request for interstate compact supervision pursuant to Sections 11175 to 11179, inclusive, whichever applies. The reasonable cost of these services and of probation supervision shall not exceed the amount determined to be the actual average cost thereof. A payment schedule for the reimbursement of the costs of preplea or presentence investigations based on income shall be developed by the probation department of each county and approved by the presiding judges of the municipal and superior courts. The court shall order the defendant to appear before the probation officer, or his or her authorized representative, to make an inquiry into the ability of the defendant to pay all or a portion of these costs. The probation officer, or his or her authorized representative, shall recommend to the court the amount of payment and the manner in which the payments shall be made to the county, based upon the defendant's ability to pay and shall inform the defendant that the recommendation is not final until ordered by the court and that the defendant is entitled to a hearing if the defendant does not agree with the recommendation.

(b) When the defendant agrees with the recommendation of the probation officer, or his or her authorized representative, the probation officer shall forward the recommendation for affirmation by the court. If the defendant does not agree with the recommendation of the probation officer, or upon its own motion, the court shall schedule a hearing to determine the amount of payment and the manner in which the payments shall be made. The court shall order the defendant to pay the reasonable costs if it determines that the defendant has the ability to pay those costs based on the payment schedule and the report of the probation officer, or

his or her authorized representative. The following shall apply to a hearing conducted pursuant to this subdivision:

(1) At the hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, and to confront and cross-examine adverse witnesses, and to disclosure of the evidence against the defendant, and a written statement of the findings of the court or the probation officer, or his or her authorized representative.

(2) At the hearing, if the court determines that the defendant has the ability to pay all or part of the costs, the court shall do either of the following:

(A) Set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability.

(B) With the consent of the defendant, the court shall order the probation officer to set the amount of payment, which shall not exceed the maximum amount set by the court, and the manner in which the payment shall be made to the county.

(3) At the hearing, in making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

(4) When the court determines that the defendant's ability to pay is different from the recommendation of the probation officer, the court shall state on the record the reason for its order.

(c) The court may hold additional hearings during the probationary period to review the defendant's financial ability to pay the amount, and in the manner, as set by the probation officer, or his or her authorized representative, or as set by the court pursuant to this section.

(d) If practicable, the court shall order or the probation officer shall recommend payments pursuant to subdivisions (a) and (b) to be made on a monthly basis. Execution may be issued on the order issued pursuant to this section in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

(e) The term "ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the preplea or presentence report, processing a jurisdictional transfer pursuant to Section 1203.9, processing requests for interstate compact supervision pursuant to Sections 11175 to 11179, inclusive, and probation supervision, and shall include, but shall not be limited to, the defendant's:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining reasonably

discernible future financial position.

(3) Likelihood that the defendant shall be able to obtain employment within the six-month period from the date of the hearing.

(4) Any other factor or factors that may bear upon the defendant's financial capability to reimburse the county for the costs.

(f) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the probation officer for a review of the defendant's financial ability to pay or the rendering court to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment. The probation officer and the court shall advise the defendant of this right at the time of rendering of the terms of probation or the judgment.

(g) All sums paid by a defendant pursuant to this section shall be allocated for the operating expenses of the county probation department.

(h) The board of supervisors in any county, by resolution, may establish a fee for the processing of payments made in installments to the probation department pursuant to this section, not to exceed the administrative and clerical costs of the collection of those installment payments as determined by the board of supervisors, except that the fee shall not exceed thirty-five dollars ($35).

(i) This section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors.

SEC. 3. Section 1203.1b of the Penal Code, as amended by Chapter 158 of the Statutes of 1993, is amended to read:

1203.1b. (a) In any case in which a defendant is convicted of an offense and is the subject of any preplea or presentence investigation and report, whether or not probation supervision is ordered by the court, and in any case in which a defendant is granted probation, or given a conditional sentence, the probation officer, or his or her authorized representative, taking into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, shall make a recommendation to the court of the ability of the defendant to pay all or a portion of the reasonable cost of any probation supervision or a conditional sentence, of conducting any preplea investigation and preparing any preplea report pursuant to Section 131.3 of the Code of Civil Procedure, and of conducting any presentence investigation and preparing any presentence report made pursuant to Section 1203, whichever applies. The reasonable cost of these services and of probation supervision or a conditional sentence shall not exceed the amount determined to be the actual average cost thereof. A payment schedule for the reimbursement of the costs of preplea or presentence investigations based on income shall be developed by the probation department of each county and approved by the presiding judges of the municipal and superior courts. The court shall order the defendant to appear before the

probation officer, or his or her authorized representative, to make an inquiry into the ability of the defendant to pay all or a portion of such costs. At a hearing, these costs. The probation officer, or his or her authorized representative, shall recommend to the court the amount of payment and the manner in which the payments shall be made to the county, based upon the defendant's ability to pay and shall inform the defendant that the recommendation is not final until ordered by the court and that the defendant is entitled to a hearing if the defendant does not agree with the recommendation.

(b) When the defendant agrees with the recommendation of the probation officer, or his or her authorized representative, the probation officer shall forward the recommendation for affirmation by the court. If the defendant does not agree with the recommendation of the probation officer, or upon its own motion, the court shall schedule a hearing to determine the amount of payment and the manner in which the payments shall be made. The court shall order the defendant to pay the reasonable costs if it determines that the defendant has the ability to pay those costs based on the payment schedule and the report of the probation officer, or his or her authorized representative. The following shall apply to a hearing conducted pursuant to this subdivision:

(1) At the hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, and to confront and cross-examine adverse witnesses, and to disclosure of the evidence against the defendant, and a written statement of the findings of the court or the probation officer, or his or her authorized representative.

(2) At the hearing, if the court determines that the defendant has the ability to pay all or part of the costs, the court shall do either of the following:

(A) Set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability.

(B) With the consent of the defendant, the court shall order the probation officer to set the amount of payment, which shall not exceed the maximum amount set by the court, and the manner in which the payment shall be made to the county.

(3) At the hearing, in making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

(4) When the court determines that the defendant's ability to pay is different from the recommendation of the probation officer, the court shall state on the record the reason for its order.

(c) The court may hold additional hearings during the probationary or conditional sentence period to review the defendant's financial ability to pay the amount, and in the manner, as set by the probation officer, or his or her authorized

representative, or as set by the court pursuant to this section.

(d) If practicable, the court shall order or the probation officer shall recommend payments pursuant to subdivisions (a) and (b) to be made on a monthly basis. Execution may be issued on the order issued pursuant to this section in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

(e) The term "ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the preplea or presentence report, and probation supervision or conditional sentence, and shall include, but shall not be limited to, the defendant's:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the defendant shall be able to obtain employment within the six-month period from the date of the hearing.

(4) Any other factor or factors that may bear upon the defendant's financial capability to reimburse the county for the costs.

(f) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the probation officer for a review of the defendant's financial ability to pay or the rendering court to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment. The probation officer and the court shall advise the defendant of this right at the time of rendering of the terms of probation or the judgment.

(g) All sums paid by a defendant pursuant to this section shall be allocated for the operating expenses of the county probation department.

(h) The board of supervisors in any county, by resolution, may establish a fee for the processing of payments made in installments to the probation department pursuant to this section, not to exceed the administrative and clerical costs of the collection of those installment payments as determined by the board of supervisors, except that the fee shall not exceed thirty-five dollars ($35).

(i) This section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors.

SEC. 4. Section 1203.1b of the Penal Code, as amended by Chapter 158 of the Statutes of 1993, is amended to read:

1203.1b. (a) In any case in which a defendant is convicted of an offense and is the subject of any preplea or presentence investigation and report, whether or not probation supervision is ordered by the court, and in any case in which a defendant is granted probation or

given a conditional sentence, the probation officer, or his or her authorized representative, taking into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, shall make a recommendation to the court of the ability of the defendant to pay all or a portion of the reasonable cost of any probation supervision or a conditional sentence, of conducting any preplea investigation and preparing any preplea report pursuant to Section 131.3 of the Code of Civil Procedure, of conducting any presentence investigation and preparing any presentence report made pursuant to Section 1203, and of processing a jurisdictional transfer pursuant to Section 1203.9 or of processing a request for interstate compact supervision pursuant to Sections 11175 to 11179, inclusive, whichever applies. The reasonable cost of these services and of probation supervision or a conditional sentence shall not exceed the amount determined to be the actual average cost thereof. A payment schedule for the reimbursement of the costs of preplea or presentence investigations based on income shall be developed by the probation department of each county and approved by the presiding judges of the municipal and superior courts. The court shall order the defendant to appear before the probation officer, or his or her authorized representative, to make an inquiry into the ability of the defendant to pay all or a portion of these costs. The probation officer, or his or her authorized representative, shall recommend to the court the amount of payment and the manner in which the payments shall be made to the county, based upon the defendant's ability to pay and shall inform the defendant that the recommendation is not final until ordered by the court and that the defendant is entitled to a hearing if the defendant does not agree with the recommendation.

(b) When the defendant agrees with the recommendation of the probation officer, or his or her authorized representative, the probation officer shall forward the recommendation for affirmation by the court. If the defendant does not agree with the recommendation of the probation officer, or upon its own motion, the court shall schedule a hearing to determine the amount of payment and the manner in which the payments shall be made. The court shall order the defendant to pay the reasonable costs if it determines that the defendant has the ability to pay those costs based on the payment schedule and the report of the probation officer, or his or her authorized representative. The following shall apply to a hearing conducted pursuant to this subdivision:

(1) At the hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, and to confront and cross-examine adverse witnesses, and to disclosure of the evidence against the defendant, and a written statement of the findings of the court or the probation officer, or his or her authorized representative.

(2) At the hearing, if the court determines that the defendant has

the ability to pay all or part of the costs, the court shall do either of the following:

(A) Set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability.

(B) With the consent of the defendant, the court shall order the probation officer to set the amount of payment, which shall not exceed the maximum amount set by the court, and the manner in which the payment shall be made to the county.

(3) At the hearing, in making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

(4) When the court determines that the defendant's ability to pay is different from the recommendation of the probation officer, the court shall state on the record the reason for its order.

(c) The court may hold additional hearings during the probationary or conditional sentence period to review the defendant's financial ability to pay the amount, and in the manner, as set by the probation officer, or his or her authorized representative, or as set by the court pursuant to this section.

(d) If practicable, the court shall order or the probation officer shall recommend payments pursuant to subdivisions (a) and (b) to be made on a monthly basis. Execution may be issued on the order issued pursuant to this section in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

(e) The term "ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the preplea or presentence report, processing a jurisdictional transfer pursuant to Section 1203.9, processing requests for interstate compact supervision pursuant to Sections 11175 to 11179, inclusive, and probation supervision or conditional sentence, and shall include, but shall not be limited to, the defendant's:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the defendant shall be able to obtain employment within the six-month period from the date of the hearing.

(4) Any other factor or factors that may bear upon the defendant's financial capability to reimburse the county for the costs.

(f) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the probation officer for a review of the defendant's financial ability to pay or the rendering

court to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment. The probation officer and the court shall advise the defendant of this right at the time of rendering of the terms of probation or the judgment.

(g) All sums paid by a defendant pursuant to this section shall be allocated for the operating expenses of the county probation department.

(h) The board of supervisors in any county, by resolution, may establish a fee for the processing of payments made in installments to the probation department pursuant to this section, not to exceed the administrative and clerical costs of the collection of those installment payments as determined by the board of supervisors, except that the fee shall not exceed thirty-five dollars ($35).

(i) This section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors.

SEC. 5. (a) Section 2 of this bill incorporates amendments to Section 1203.1b of the Penal Code proposed by both this bill and AB 306. It shall only become operative if (1) both bills are enacted and become effective January 1, 1994, (2) each bill amends Section 1203.1b of the Penal Code, (3) AB 309 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 306, in which case Sections 1, 3, and 4 of this bill shall not become operative.

(b) Section 3 of this bill incorporates amendments to Section 1203.1b of the Penal Code proposed by both this bill and AB 309. It shall only become operative if (1) both bills are enacted and become effective January 1, 1994, (2) each bill amends Section 1203.1b of the Penal Code, (3) AB 306 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 309, in which case Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates amendments to Section 1203.1b of the Penal Code proposed by this bill, AB 306, and AB 309. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1994, (2) all three bills amend Section 1203.1b of the Penal Code, and (3) this bill is enacted after AB 306 and AB 309, in which case Sections 1, 2, and 3 of this bill shall not become operative.

CHAPTER 503

An act to amend Sections 53296 and 53298 of the Government Code, relating to local agencies.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 53296 of the Government Code is amended to read:

53296. Definitions used in this article:

(a) "Local agency" means any county, city, city and county, including any charter county, city, or city and county, and any district, school district, community college district, municipal or public corporation, political subdivision, or public agency of the state, or any instrumentality of any one or more of these agencies.

(b) "Disciplinary action" means any direct form of discipline as defined in personnel rules and regulations adopted by the local agency. "Disciplinary action" shall include the firing of an employee.

(c) "Disclosure of information" means the written provision of evidence regarding gross mismanagement or a significant waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(d) "Complaint" means any written document containing a disclosure of information as specified in subdivision (c).

(e) "Employee" means any person employed by a local agency.

(f) "Manager" means any employee having significant responsibilities for formulating or administering local agency or departmental policies and programs or administering the local agency or a department.

(g) "Supervisory employee" or "supervisor" means any employee regardless of job description or title, having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend this action, if, in connection with the foregoing, the exercise of this authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(h) "Officer" means any appointed member of a local board, commission, or other governing body who supervises or is responsible for the work of one or more local agency employers.

(i) "Administrative procedure" means any written administrative procedure adopted by the local agency for presentation of a grievance for ultimate decision by the governing body of the local agency. The term does not include grievance procedures embodied in collective bargaining agreements.

(j) "Reprisal action" means any act of intimidation, restraint,

coercion, discrimination, or disciplinary action against any employee, or applicant for employment, who files a complaint pursuant to Section 53297.

SEC. 2. Section 53298 of the Government Code is amended to read:

53298. (a) No local agency officer, manager, or supervisor shall take a reprisal action against any employee or applicant for employment who files a complaint pursuant to Section 53297.

(b) This article is not intended to prevent a local agency from taking, directing others to take, recommending, or approving any personnel action with respect to any employee or applicant for employment if the local agency reasonably believes that the action or inaction is justified on the basis of separate evidence which shows any of the following:

(1) The employee's complaint has disclosed information that he or she knows to be false or has disclosed information without regard for the truth or falsity thereof.

(2) The employee's complaint has disclosed information from records which are closed to public inspection pursuant to law.

(3) The employee's complaint has disclosed information which is confidential under any other provision of law.

(4) The employee was the subject of an ongoing or existing disciplinary action prior to the disclosure of information with the local agency.

(5) The employee has violated any other provision of the local personnel rules and regulations, has failed to perform assigned duties, or has committed any other act unrelated to the disclosure that would otherwise be subject to personnel action.

(c) It is not a violation of this article for an officer, manager, or supervisor to take disciplinary action against an employee if that officer, manager, or supervisor had no prior knowledge that a complaint had been filed by that employee.

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

CHAPTER 504

An act to amend Section 4420 of the Government Code, relating to insurance.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 4420 of the Government Code is amended to read:

4420. (a) No officer or employee of this state, or of any public agency or of any public authority, and no person acting or purporting to act on behalf of any officer, employee, or public agency or authority, except a public agency or authority created pursuant to agreement or compact with another state, shall, with respect to any public building or construction contract which is about to be or which has been competitively bid, require the bidder to make application to, or furnish financial data to, or to obtain or procure any surety bond or contract of insurance specified in connection with the contract, or specified by any law, ordinance, or regulation, from, a particular surety or insurance company, agent, or broker.

(b) No officer or employee, or person, firm, or corporation acting or purporting to act on behalf of any officer or employee, shall negotiate, make application for, obtain, or procure any such surety bond or contract of insurance (except contracts of insurance for builder's risk or owner's protective liability) which can be obtained or procured by the bidder, contractor, or subcontractor.

(c) Subdivision (b) shall not apply to the construction of any exclusive public mass transit guideway project in any county with a population exceeding 6,000,000, or in the County of Santa Clara or the City and County of San Francisco, to any exclusive public mass transit guideway project undertaken by either the San Francisco Bay Area Rapid Transit District or the Sacramento Regional Transit District, to any airport expansion project undertaken at the San Francisco International Airport, to any water, wastewater, or reclamation project undertaken by a public agency serving a population exceeding 250,000, to any exclusive public water storage or conveyance facility undertaken by a metropolitan water district that was organized under the Metropolitan Water District Act, Chapter 209 of the Statutes of 1969, as amended, to any county medical center within San Bernardino County or Riverside County, or to any construction project undertaken by the Harbor Department of the City of Los Angeles.

(d) As used in this section, "public agency" means any city, county, city and county, district, municipal or public corporation, or any agency or instrumentality thereof.

SEC. 2. The Legislature finds and declares that due to unique

circumstances concerning the county medical center in San Bernardino County or Riverside County and the Harbor Department of the City of Los Angeles, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 505

An act to add and repeal Chapter 1.5 (commencing with Section 120) of Division 1 of the Welfare and Institutions Code, relating to counties.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Chapter 1.5 (commencing with Section 120) is added to Division 1 of the Welfare and Institutions Code, to read:

CHAPTER 1.5. RIVERSIDE COUNTY EMPLOYEES

120. (a) Riverside County may require that prospective employees described in subdivision (b) be fingerprinted. In addition, the county may use the fingerprints to obtain a record of criminal convictions for prospective employees described in subdivision (b) from an appropriate law enforcement agency.

(b) Subdivision (a) may, at the discretion of the county, apply to any of the following prospective employees:

(1) Those whose job assignments include a risk that, through the actions of the prospective employee, the children or adults for whom the county department is responsible could be harmed.

(2) Those whose job assignments include a risk that, through the actions of the prospective employee, fraudulent payment of public funds could occur.

(c) If the county elects to apply subdivision (a), it shall do so uniformly within every county department and throughout the county.

(d) Notwithstanding subdivision (b), subdivision (a) shall not apply to prospective employees covered by Section 1030 of the Government Code.

121. (a) Information obtained pursuant to Section 120 shall only be used in making employment decisions.

(b) In considering information obtained pursuant to Section 120, the county may use only those criminal convictions that are relevant to the job assignment of the prospective employee.

(c) If a county, in making its employment decision, intends to utilize any information obtained pursuant to Section 120 concerning

a criminal conviction of the prospective employee, the county shall give the prospective employee an opportunity to explain the conviction and shall consider that explanation in the evaluation of the criminal conviction record.

122. This chapter shall not be construed as allowing a county to avoid compliance with any requirements of law or regulations.

123. If Riverside County elects to implement this chapter, Riverside County shall, on or before March 31, 1995, report to the appropriate committees of the Legislature on the implementation of this chapter. The report shall include, but not be limited to, all of the following:

(1) The impact upon the protection of children and adults.

(2) The impact upon employee fraud.

(3) The impact upon employment or retention of employees who are members of minority groups.

124. This chapter shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

CHAPTER 506

An act to amend Sections 87359 and 87615 of, and to add Sections 87356 and 81378.1 to, the Education Code, relating to postsecondary education.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 81378.1 is added to the Education Code, to read:

81378.1. (a) The governing board of a community college district may, without complying with any other provision of this article, let in the name of the district any buildings, grounds, or space therein, together with any personal property located thereon, not needed for academic activities, upon the terms and conditions agreed upon by the governing board and the lessee for a period of more than five days but less than five years, as determined by the governing board. The fair market value of the lease of any buildings, grounds, or space therein, together with any personal property located thereon, let pursuant to this section shall not exceed twenty-five thousand dollars ($25,000) per year, as certified by the governing board. Prior to executing the lease, the governing board shall include in an agenda of a meeting of the board open to the public a description of the proposed lease and an explanation of the methodology used to establish the lease rate and for determining the fair market value of the lease.

(b) The governing board shall give public notice prior to taking any action pursuant to subdivision (a). The notice shall include a description of the governing board's intended action. The notice shall be printed once a week for three successive weeks prior to the board meeting described in subdivision (a) in a newspaper of general circulation that is published at least once a week.

(c) The governing board shall include as a condition in any agreement to let any buildings, grounds, or space therein, together with any personal property located thereon, a provision that the agreement shall be subject to renegotiation and may be rescinded after 60 days' notice to the lessee if the governing board determines at any time during the term of the agreement that the buildings, grounds, or space therein subject to the agreement are needed for academic activities. Any revenue derived pursuant to the agreement shall be retained for the exclusive use of the community college district whose buildings, grounds, or space therein are the basis of the agreement and shall be used to supplement, but not supplant, any state funding. Any buildings, grounds, or space therein, let by the district shall be included as space actually available for use by the college in any calculations related to any plan for capital construction submitted to the board of governors pursuant to Chapter 4 (commencing with Section 81800) or any other law.

(d) The authority of a governing board under this section does not apply to the letting of an entire campus.

(e) The use of any buildings, grounds, or space therein, together with any personal property located thereon, let by the governing board pursuant to this section shall be consistent with all applicable zoning ordinances and regulations.

SEC. 2. Section 87356 is added to the Education Code, to read:

87356. (a) The board of governors shall adopt regulations to establish and maintain the minimum qualifications for service as a faculty member teaching credit instruction, a faculty member teaching noncredit instruction, a librarian, a counselor, an educational administrator, an extended opportunity programs and services worker, a disabled students programs and services worker, an apprenticeship instructor, and a supervisor of health.

(b) The Legislature finds and declares that this section does not create a state-mandated local program because compensation of faculty will continue to be determined through the collective bargaining process or meet and confer sessions.

SEC. 3. Section 87359 of the Education Code is amended to read:

87359. The board of governors shall adopt regulations setting forth a process authorizing local governing boards to employ faculty members and educational administrators who do not meet the applicable minimum qualifications specified in the regulations adopted by the board of governors pursuant to Section 87356. Unless and until amended pursuant to the process described in Section 87357, the regulations shall require all of the following:

(a) No one may be hired to serve as a community college faculty

member or educational administrator under the authority granted by the regulations unless the governing board determines that he or she possesses qualifications that are at least equivalent to the minimum qualifications specified in regulations of the board of governors adopted pursuant to Section 87356. The criteria used by the governing board in making the determination shall be reflected in the governing board's action employing the individual.

(b) The process, as well as criteria and standards by which the governing board reaches its determinations regarding faculty members, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that each individual faculty member employed under the authority granted by the regulations possesses qualifications that are at least equivalent to the applicable minimum qualifications specified in regulations adopted by the board of governors. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination, and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.

(c) Until a joint agreement is reached and approved pursuant to subdivision (b), the district process in existence on January 1, 1989, shall remain in effect.

SEC. 4. Section 87615 of the Education Code is amended to read:

87615. Commencing July 1, 1991, the minimum degree requirement for tenure as a community college faculty member shall be a bachelor's degree or equivalent from an accredited institution, or an equivalent foreign degree, except that in the case of vocational faculty, this requirement shall commence January 1, 1995, for persons hired on or after that date. The board of governors shall monitor the effects and anticipated effects of this provision upon hiring practices within the districts, analyze the results, and make a report and recommendation to the Legislature no later than January 1, 1994.

The governing board may grant tenure to faculty members who do not meet the minimum degree requirement for tenure specified in this section if both of the following conditions are met:

(a) The governing board determines that rare and compelling reasons exist justifying the action. The reasons for the governing board's determination shall be reflected in its action granting tenure to the individual.

(b) The process by which the governing board reaches the determination has been developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board

relies primarily upon the advice and judgment of the academic senate to determine that rare and compelling reasons exist to grant tenure. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination, and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.

(c) Until a joint agreement is reached pursuant to subdivision (b), the district process in existence on January 1, 1989, shall remain in effect.

CHAPTER 507

An act to amend Section 1280.7 of the Insurance Code, relating to cooperative corporations.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 1280.7 of the Insurance Code is amended to read:

1280.7. This chapter and the other provisions of this code, except as set forth in this paragraph, shall not apply to or affect unincorporated interindemnity or reciprocal or interinsurance contracts between members of a cooperative corporation, organized and operating under Part 2 (commencing with Section 12200) of Division 3 of Title 1 of the Corporations Code whose members consist solely of physicians and surgeons licensed in California, which contracts indemnify solely in respect to medical malpractice claims against those members , and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration. However, interindemnity, reciprocal, or interinsurance contracts with respect to the following types of claims, in addition to medical malpractice claims, may be entered into in conjunction with contracts with respect to medical malpractice claims if the reserve trust fund is at least twenty million dollars ($20,000,000):

(1) Bodily injury or property damage arising out of the conduct and of the operations of the member's professional practice occurring on the member's premises.

(2) Officers', directors', and administrators' liability, to the extent that the member's professional practice is operated as a professional corporation or group.

(3) Nonowned automobile coverage.

The provisions of Chapter 3 (commencing with Section 330) of

Part 1 of Division 1 shall apply to unincorporated interindemnity or reciprocal or interinsurance contracts. Those unincorporated interindemnity or reciprocal or interinsurance contracts shall comply with all of the following requirements:

(a) Each participating member shall enter into and, concurrently therewith, receive an executed copy of a trust agreement, which shall govern the collection and disposition of all funds of the interindemnity arrangement.

The trust agreement shall, as a minimum, contain provision for all the following matters:

(1) An initial trust corpus of not less than ten million dollars ($10,000,000), which corpus shall be a trust fund to secure enforcement of the interindemnity arrangement. The average contribution to the initial trust corpus shall be not less than twenty thousand dollars ($20,000) per member participating in the interindemnity arrangement. The average contribution to the trust fund shall continue at all times to be not less than twenty thousand dollars ($20,000) per participating member unless the interindemnity arrangement is qualified to admit members under the terms of subdivision (k). No such interindemnity arrangement shall become operative until the requisite minimum reserve trust fund has been established by contributions from not less than 500 participating members.

(2) The reserve trust fund created by the trust agreement shall be administered by a board of trustees of three or more members, all of whom shall be physicians and surgeons licensed in California, participating members in the interindemnity arrangement, and elected biennially or more frequently by at least a majority of all members participating in the interindemnity arrangement.

(3) The members of the board of trustees are fiduciaries and the board shall be the custodian of all funds of the interindemnity arrangement, and all those funds shall be deposited in such bank or banks and savings and loan associations in California as the board may designate. Each account shall require two or more signatories for withdrawal of funds in excess of ten thousand dollars ($10,000). The authorized signatories shall be appointed by the board and, and as to any withdrawal in excess of one hundred thousand dollars ($100,000), at least one of the two or more authorized signatories shall be a physician and surgeon licensed in California and a participating member in the interindemnity arrangement. Each signatory on those accounts shall maintain, at all times while empowered to draw on those funds, for the benefit of the interindemnity arrangement, a bond against loss suffered through embezzlement, mysterious disappearance, holdup or burglary or other loss issued by a bonding company licensed to do business in California in a penal sum of not less than one hundred thousand dollars ($100,000).

(4) All funds held in trust which are in excess of current financial needs shall be invested and reinvested from time to time, under the

direction of the board of trustees, in eligible securities, as defined in Section 16430 of the Government Code, in portfolios of eligible securities, in exchange traded financial futures contracts or exchange traded options contracts to hedge investment in those eligible securities, or in certificates of deposits or time deposits issued by banks and savings and loan associations in California duly insured by instrumentalities of the United States government.

Pursuant to the authority contained in Section 1 of Article XV of the California Constitution, the restrictions upon rates of interest contained in Section 1 of Article XV of the California Constitution shall not apply to any obligations of, loans made by, or forbearances of, any trust established by a cooperative corporation providing indemnity pursuant to this section.

(5) The income earned on the corpus of the trust fund shall be the source for the payment of the claims, costs, judgments, settlements, and costs of administration contemplated by the interindemnity arrangement, and to the extent the income is insufficient for those purposes, the board of trustees shall have the power and authority to assess participating members for all amounts necessary to meet the obligations of the interindemnity arrangement in accordance with the terms thereof. Where necessary in the best interests of the interindemnity arrangement, the board of trustees may make assessments to increase the corpus of the trust fund in accordance with the terms of the interindemnity arrangement. Any assessment levied against a member shall be the personal obligation of the member. Any person who obtains a final judgment of recovery for medical malpractice or other liability authorized by this section against a member of the interindemnity arrangement shall have, in addition to any other remedy, the right to assert directly all rights to indemnification which the judgment debtor has under the interindemnity arrangement. The final judgment shall be a lien on the reserve trust fund to secure payment of the judgment, limited to the extent of the judgment debtor's rights to indemnification.

Any change in the assessment agreement between the interindemnity arrangement and its membership shall be submitted to the entire membership for ratification. If the ratification process is to be performed by a mail ballot, a ballot shall be sent to each member by first-class mail, postage prepaid. Within 45 days after the posted date on the mail ballot, each member who decides to vote on the assessment change shall return his or her ballot to the interindemnity arrangement for the tallying of the ballots. An affirmative vote of 75 percent of those voting shall be required to effectuate any change in the assessment agreement.

If a change in the assessment agreement is to be submitted to members at a properly called meeting, the membership shall be notified of the meeting and the proposed assessment change by first-class mail, postage prepaid, posted at least 45 days prior to the meeting. Seventy-five percent of those present in person or by proxy at the meeting shall be required to effectuate any change in the

assessment agreement.

(6) Each participating member shall be covered by the interindemnity arrangement for not less than one million dollars ($1,000,000) for each occurrence of professional negligence or other liability authorized by this section, with the terms and conditions of the coverage to be specified in the trust agreement, except that the interindemnity arrangement may provide participating members with an aggregate limit for all payments on behalf of the member and may provide participating members with less than one million dollars ($1,000,000) of coverage for each occurrence of professional negligence or other liability authorized by this section if the interindemnity arrangement obtains for the benefit of the members reinsurance of excess limits coverage in an amount which when added to the coverage provided by the interindemnity arrangement would equal not less than one million dollars ($1,000,000) for each occurrence of professional negligence or other liability authorized by this section.

Any change in the coverage provided by the trust agreement between the interindemnity arrangement and its membership shall be submitted to the entire membership for ratification. If the ratification process is to be performed by a mail ballot, a ballot shall be sent to each member by first-class mail, postage prepaid. Within 45 days after the posted date on the mail ballot, each member who decides to vote on the coverage change shall return his or her ballot to the interindemnity arrangement for the tallying of the ballot. An affirmative vote of 75 percent of those voting shall be required to effectuate any change in the coverage provided by the trust agreement, except that at least 50 percent of the entire membership must agree to any such change.

If any such change is to be submitted to members at a properly called meeting, the membership shall be notified of the meeting and the proposed coverage change by first-class mail, postage prepaid, posted at least 45 days prior to the meeting. An affirmative vote of 75 percent of the membership present at the meeting, in person or by proxy, shall be required to effectuate any such change, except that at least 50 percent of the entire membership must agree to any such change.

(7) Withdrawal of all, or any portion of, the corpus of the reserve trust fund shall be upon the written authorization signed by at least two-thirds of the members of the board of trustees.

(8) The board of trustees shall cause both of the following to be furnished to each member participating in the interindemnity arrangement, and to be filed with the Commissioner of Corporations:

(A) Within 90 days after the end of each fiscal year a statement of the assets and liabilities of the interindemnity arrangement as of the end of that year, a statement of the revenue and expenditures of the interindemnity arrangement, and a statement of the changes in corpus of the reserve trust for that year, in each case accompanied by a certificate signed by a firm of independent certified public

accountants selected by the board of trustees indicating that the firm has conducted an audit of those statements in accordance with generally accepted auditing standards and indicating the results of the audit.

(B) Within 45 days after the end of each of the first three quarterly periods of each fiscal year a statement of the assets and liabilities of the interindemnity arrangement as of the end of the quarterly period, a statement of the revenue and expenditures of the interindemnity arrangement and a statement of the changes in corpus of the reserve trust for the period, in each case accompanied by a certificate signed by a majority of the members of the board of trustees to the effect that the statements were prepared from the official books and records of the interindemnity arrangement.

(C) In addition to the statements required to be filed pursuant to this paragraph, the board of trustees shall annually file with the Commissioner of Corporations an authorization for disclosure to the commissioner of all financial records pertaining to the interindemnity arrangement. For the purpose of this clause, the authorization for disclosure shall also include the financial records of any association, partnership, or corporation that has management or control of the funds or the operation of the interindemnity arrangement.

(9) The trust agreement shall also provide for all the following:

(A) In the event a participating member who is in full compliance with the trust agreement, including the payment of all outstanding dues and assessments, dies, the initial contribution made by the decedent shall be returned to the member's estate or designated beneficiary; the indemnity coverage shall continue for the benefit of the decedent's estate in respect of occurrences during the time the decedent was a participating member; and neither the person receiving the repayment of the initial contribution nor the decedent's estate shall be responsible for any assessments levied following the death of the member.

(B) A participating member who is then in full compliance with the trust agreement and who has reached the age of 65 and who has retired completely from the practice of medicine may elect to retire from the interindemnity arrangement, in which case the member shall not be responsible for assessments levied following the date notice of retirement is given to the trust. Following that retirement, the indemnity coverage shall continue for the benefit of the member in respect of occurrences prior to the time the member retired from the interindemnity arrangement. That retired member's initial contribution shall be repaid 10 years from the date the notice of retirement is received by the trust, or such earlier date as specified in the trust agreement. The board of trustees may reduce the age for retirement to not less than 55 years subject to all other requirements in this paragraph and any additional requirements deemed necessary by the board.

(C) During any period in which a participating member, who is

then in full compliance with the trust agreement, has, in the judgment of the board of trustees, become unable to perform any and every duty of his or her regular professional occupation, the participating member may request disability status in accordance with the terms of the interindemnity arrangement. During any period of disability status, the member shall not be responsible for assessments levied during the period and, where so provided in the interindemnity arrangement, all indemnity coverage, both as to defense and payment of claims, shall terminate as to occurrences arising out of the actions of the participating member during the period of disability status.

(D) In the event a participating member fails to pay any assessment when the same is due, the board of trustees may terminate that person's membership status if the failure to pay is not cured within 30 days from the date the assessment was due. Upon that termination the former participating member shall not be entitled to the return of all or any part of his or her initial contribution, and the indemnity coverage shall thereupon terminate as to all claims then pending against that person and in respect to all occurrences prior to the date of that termination of membership. However, in the event the interindemnity arrangement is then providing legal defense services to that person, the interindemnity arrangement shall continue to provide those services for a period of 10 days following that termination.

(E) In the event a participating member fails to comply with any provision of the trust agreement (other than a failure to pay assessments when due), the board of trustees may terminate that person's membership status if the failure to comply is not cured within 60 days from the date the person is notified of the failure; provided that before that membership status may be terminated the person shall be given the right to call for a hearing before the board of trustees (to be held before the expiration of the 60-day period), at which hearing the person shall be given the opportunity to demonstrate to the board of trustees that no failure to comply has occurred or, if it has occurred, that it has been cured. Upon that termination, the former participating member shall not be entitled to the return of all or any part of his or her initial contribution, and the indemnity coverage shall thereupon terminate as to all claims then pending against the person and in respect to all occurrences prior to the date of the termination of membership. However, in the event the interindemnity arrangement is then providing legal defense services to that person, the interindemnity arrangement shall continue to provide those services for a period of 10 days following the termination.

(F) A participating member who is then in full compliance with the trust agreement may elect voluntarily to terminate his or her membership in the interindemnity arrangement. Upon that voluntary termination, that person may further elect to cease being responsible for future assessments, or to continue to pay those

assessments until the time as the person's initial contribution is repaid. In the event the person elects to cease being responsible for future assessments, the indemnity coverage shall thereupon terminate and the person shall either be responsible for his or her own exposure for acts committed while a participating member in the interindemnity arrangement, or he or she may request the interindemnity arrangement to purchase or provide, at the cost of the person, coverage for that exposure. The initial contribution of the person shall be repaid on the 10th anniversary of the date the contribution was made. In the event the person elects to continue to be responsible for assessments, the indemnity coverage shall continue in respect of occurrences prior to the date of the voluntary termination, and the initial contribution of the person shall be repaid at such time as the board of trustees is satisfied that (i) there are no claims pending against the person in respect of occurrences during the time the person was a participating member, and (ii) the statute of limitations has run on all claims which might be asserted against that person in respect of occurrences during that time. In no event shall that repayment be made earlier than the 10th anniversary of the date the contribution was made.

Any person whose membership in an interindemnity arrangement is involuntarily terminated for failure to pay assessments or who voluntarily terminates that membership and elects to be responsible for his or her own exposure for acts committed while a participating member, shall not be eligible to become a member of any other interindemnity arrangement for a period of five years after the termination unless, on the effective date of the act which amended this section during the 1985–86 Regular Session, the person had on file with the Department of Corporations a copy of a subscription agreement signifying the person's agreement to transfer membership or had paid a minimum of ten thousand dollars ($10,000) to another interindemnity arrangement which was granted a permit to organize prior to January 1, 1985.

(G) The board of trustees shall have the right to terminate the membership of a participating member where the board of trustees determines that the termination is in the best interests of the interindemnity arrangement even though that person has complied with all of the provisions of the trust agreement. Such a termination may be effected only if at least two-thirds of the members of the board of trustees indicate in writing their decision so to terminate. If the board of trustees proposes so to terminate a member, the member shall have the right to call a special meeting of all participating members in accordance with the rules established by the board of trustees for the purpose of voting on whether or not the member shall be so terminated. The member shall not be so terminated if at least two-thirds of the participating members present, in person or by proxy, indicate that the member should not be so terminated. In the event a member is so terminated, the person shall elect either: (i) to request the return of his or her initial

contribution, in which case the same shall be repaid and the indemnity coverage shall thereupon terminate as to all claims then pending against the person and in respect to all occurrences prior to the date of the termination of membership. However, in the event the interindemnity arrangement is then providing legal defense services to the person, the interindemnity arrangement shall continue to provide those services for a period of 30 days to enable the person to assume his or her own defense; or (ii) to release all rights to the return of the initial contribution, in which case the indemnity coverage shall continue for the benefit of the member in respect of occurrences during the time the person was a participating member and the person shall have no responsibility for assessments levied following that termination. The interindemnity arrangement may provide that if a member is so terminated and fails to make the election set forth herein within 45 days of the date of notification of termination of membership, the participating member shall be deemed to have elected to release all rights to a return of his or her initial contribution, in which case indemnity coverage shall apply for the benefit of the member with respect to occurrences occurring prior to the termination.

(10) Each member participating in the interindemnity arrangement shall have the right of access to, and the inspection of, the books and records of the interindemnity arrangement, which rights shall be similar to the corporate shareholders pursuant to Section 3003 of the Corporations Code, or, commencing January 1, 1977, Sections 1600 to 1605, inclusive, of the Corporations Code.

(11) There shall be a meeting of all members participating in the interindemnity arrangement, at least annually, after not less than 10 days' written notice has been given, at a location reasonably convenient to the participating members and on a date which is within a reasonable period of time following the distribution of the annual financial statements.

(12) Notwithstanding Sections 12453 and 12703 of the Corporations Code, on any matter to be voted upon by the membership at either a regular or special meeting, a member shall have the right to vote in person or by written proxy filed with the corporate secretary prior to the meeting. No such proxy shall be made irrevocable, nor be valid beyond the earliest of the following dates:

(A) The date of expiration set forth in the proxy; or

(B) The date of termination of membership; or

(C) Eleven months from the date of execution of the proxy; or

(D) Such time as may be specified in the bylaws, not to exceed 11 months.

(13) The interindemnity arrangement, and the reserve trust fund incident thereto, shall be subject to termination at any time by the vote or written consent of not less than three-fourths of the participating members.

(b) The board of trustees shall cause to be recorded with the office

of the county recorder of the county of the principal place of business of the interindemnity arrangement within 90 days following the end of each fiscal year, a written statement, executed by a majority of the board of trustees under penalty of perjury, reciting that each member participating in the interindemnity arrangement was mailed a copy of the annual financial statement and quarterly audit certificates by first-class mail, postage prepaid, required pursuant to paragraph (8) of subdivision (a).

(c) Each person solicited to become a participating member in such an interindemnity arrangement shall receive in writing, at least 48 hours prior to the execution by the prospective participating member of the trust agreement, and at least 48 hours prior to the payment by the prospective participating member of any consideration in connection with the interindemnity arrangements, the following information:

(1) A copy of the articles of incorporation and bylaws of the cooperative corporation and a copy of the form of trust agreement to be executed by the prospective participating member.

(2) A disclosure statement regarding the interindemnity arrangement. The disclosure statement shall contain on the first or cover page a legend in boldface type reading substantially as follows:

"THE INTERINDEMNITY ARRANGEMENT CONTEMPLATED HEREIN PROVIDES THAT PARTICIPATING MEMBERS HAVE UNLIMITED PERSONAL LIABILITY FOR ASSESSMENTS WHICH MAY BE LEVIED TO PAY FOR THE PROFESSIONAL NEGLIGENCE OR OTHER LIABILITY AUTHORIZED BY THIS SECTION. NO ASSURANCES CAN BE GIVEN REGARDING THE AMOUNT OR FREQUENCY OF ASSESSMENTS WHICH MAY BE SO LEVIED, OR THAT ALL PARTICIPATING MEMBERS WILL MAKE TIMELY PAYMENT OF THEIR ASSESSMENTS TO COVER THE PROFESSIONAL NEGLIGENCE OR OTHER LIABILITY AUTHORIZED BY THIS SECTION."

(3) The disclosure statement shall further contain all of the following information:

(A) The amount, nature and terms and conditions of the professional negligence or other liability relating to a member's professional practice coverage available under the interindemnity arrangement.

(B) The amount of the initial contribution required of each participating member and a statement of the minimum number of members and aggregate contributions required for the interindemnity arrangement to commence.

(C) The names, addresses and professional experience of each member of the board of trustees.

(D) The requirements for admission as a participating member.

(E) A statement of the services to be provided under the interindemnity arrangement to each participating member.

(F) A statement regarding the obligation of each member to pay

assessments and the consequences for failure to do so.

(G) A statement of the rights and obligations of a participating member in the event the member dies, retires, becomes disabled or terminates participation for any reason, or the interindemnity arrangement terminates for any reason.

(H) A statement regarding the services to be provided, indicating whether these services will be delegated to others pursuant to a contractual arrangement. For those services delegated to others pursuant to a contractual arrangement, a statement fully disclosing and itemizing all consideration received directly or indirectly under the arrangement, and indicating what the consideration is for, and how, when, and to whom the consideration will be paid.

(I) A statement of the voting rights of the members and the circumstances under which participation of a member may be terminated and under which the interindemnity arrangement may be terminated.

(J) If any statement of estimated or projected financial information for the interindemnity arrangement is used, a statement of the estimation or projection and a summary of the data and assumptions upon which it is based.

(4) A list with the names and addresses of current participating members of the interindemnity arrangement.

(d) No officer, director, trustee, employee or member of the interindemnity arrangement or the cooperative corporation shall receive, or be entitled to receive, any payment, bonus, salary, income, compensation or other benefit whatsoever, either from the reserve trust fund or the income therefrom or from any other funds of the interindemnity arrangement or the members thereof based on the number of participating members, or the amount of the reserve trust fund or other funds of the interindemnity arrangement.

(e) A peer review committee or committees shall be established by the trust agreement to review the qualifications of any physician and surgeon to participate or continue to participate in the interindemnity arrangement, and to review the quality of medical services rendered by any participating member, as well as the validity of medical malpractice claims made against participating members. Any physician and surgeon, prior to becoming a participating member of the interindemnity arrangement, shall be reviewed and approved by a majority of the members of the peer review committee. No peer review committee, or any of its members, shall be liable for any action taken by the committee in reviewing the qualifications of a physician and surgeon to participate or continue to participate, or the quality of medical services rendered, or the validity of a medical malpractice claim, unless it is alleged and proved that the action was taken with actual malice.

(f) The following are hereby defined as unfair methods of competition and deceptive acts or practices with respect to cooperative corporations or interindemnity arrangements provided for in this section.

(1) Making any false or misleading statement as to, or issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular, or statement misrepresenting the terms of any interindemnity arrangement or the benefits or advantages promised thereby, or making any misleading representation or any misrepresentation as to the financial condition of the interindemnity arrangement, or making any misrepresentation to any participating member for the purpose of inducing or tending to induce the member to lapse, forfeit, or surrender his or her rights to indemnification under the interindemnity arrangement. It shall be a false or misleading statement to state or represent that a cooperative corporation or interindemnity arrangement is or constitutes "insurance" or an "insurance company" or an "insurance policy."

(2) Making or disseminating or causing to be made or disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatsoever, any statement containing any assertion, representation, or statement with respect to those cooperative corporations or interindemnity arrangements, or with respect to any person in the conduct of those cooperative corporations or interindemnity arrangements, which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading. It shall be a false or misleading statement to state or represent that a cooperative corporation or interindemnity arrangement is or constitutes "insurance" or an "insurance company" or an "insurance policy."

(3) Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in an unreasonable restraint of, or monopoly in, those cooperative corporations or interindemnity arrangements.

(4) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, or delivered to any person, or placed before the public any false statement of financial condition of a cooperative corporation or interindemnity arrangement with intent to deceive.

(5) Making any false entry in any book, report, or statement of a cooperative corporation or interindemnity arrangement with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom a cooperative corporation or interindemnity arrangement is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to a cooperative corporation or interindemnity arrangement in any book,

report, or statement of a cooperative corporation or interindemnity arrangement.

(6) Making or disseminating, or causing to be made or disseminated, before the public in this state, in any newspaper or other publication, or any other advertising device, or by public outcry or proclamation, or in any other manner or means whatever, whether directly or by implication, any statement that such a cooperative corporation or interindemnity arrangement is a member of the California Insurance Guarantee Association, or insured against insolvency as defined in Section 119.5. This paragraph shall not be interpreted to prohibit any activity of the California Insurance Guarantee Association or of the commissioner authorized, directly or by implication, by Article 14.2 (commencing with Section 1063) of Chapter 1 of this part.

(7) Knowingly committing or performing with such frequency as to indicate a general business practice any of the following unfair claims settlement practices:

(A) Misrepresenting to claimants pertinent facts or provisions relating to any coverage at issue.

(B) Failing to acknowledge and act promptly upon communications with respect to claims arising under those interindemnity arrangements.

(C) Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under those interindemnity arrangements.

(D) Failing to affirm or deny coverage of claims within a reasonable time after proof of claim requirements have been completed and submitted by the participating member.

(E) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.

(F) Compelling participating members to institute litigation to recover amounts due under an interindemnity arrangement by offering substantially less than the amounts ultimately recovered in actions brought by those participating members when those participating members have made claims under those interindemnity arrangements for amounts reasonably similar to the amounts ultimately recovered.

(G) Attempting to settle a claim by a participating member for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application for membership in an interindemnity arrangement.

(H) Attempting to settle claims on the basis of an interindemnity arrangement which was altered without notice to the participating member.

(I) Failing, after payment of a claim, to inform participating members, upon request by them, of the coverage under which payment has been made.

(J) Making known to claimants a practice of the cooperative corporation or interindemnity arrangement of appealing from arbitration awards in favor of claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

(K) Delaying the investigation or payment of claims by requiring a claimant, or his or her physician, to submit a preliminary claim report, and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

(L) Failing to settle claims promptly, where liability has become apparent, under one portion of an interindemnity arrangement in order to influence settlements under other portions of the interindemnity arrangement.

(M) Failing to provide promptly a reasonable explanation of the basis relied on in the interindemnity arrangement, in relation to the facts of applicable law, for the denial of a claim or for the offer of a compromise settlement.

(N) Directly advising a claimant not to obtain the services of an attorney.

(O) Misleading a claimant as to the applicable statute of limitations.

(g) Notwithstanding any contrary provisions of Part 2 (commencing with Section 12200) of Division 3 of Title 1 of the Corporations Code, it shall not be necessary to hold a meeting of members of the cooperative corporation for the purpose of electing directors if the bylaws provide the election may be held by first-class mail balloting. First-class mail balloting may also be used in conjunction with a meeting at which directors are to be elected and all mail ballots shall count toward establishing a quorum for the meeting for the limited purpose of the issues set forth in the mail ballot. Directors shall be elected as follows:

(1) The candidates receiving the highest number of votes, up to the number of directors to be elected, by a specified date at least 45 days but not later than 60 days after the ballots are first mailed, postage prepaid, to the members (or the date of a meeting of members held in conjunction therewith) shall be elected.

(2) In the event that no candidate receives a majority of the votes cast for a vacant office, a runoff election shall be held between the two candidates receiving the highest number of votes cast. The runoff election shall be held at least 45 days but not more than 60 days after the ballots for the election are mailed, postage prepaid. In the event that there is more than one office for which no candidate receives a majority of the votes cast, the candidates for the runoff shall be twice the number of vacant offices, and shall be those persons who received the highest number of votes therefor.

Those first-class mail ballots shall be kept on file for a period of three months after all vacant board positions have been filled, and shall be subject to inspection at any reasonable time by any members

of the cooperative corporation.

(h) No officer, director, trustee, or member of the interindemnity arrangement or the cooperative corporation, or any entity in which that person has a material financial interest, shall enter into or renew any transaction or contract with the trust unless the material facts as to the transaction or contract and as to the interest of the person are fully disclosed to the participating members, and the transaction or contract is approved by an affirmative vote of at least 75 percent of the membership present at a meeting, in person or by proxy. If any such transaction or contract is to be submitted to members at a properly called meeting, the membership shall be notified of the meeting and of the transaction or contract by first-class mail, postage prepaid, at least 45 days prior to the meeting.

(i) Services provided to the trust pursuant to a delegated contractual arrangement shall be embodied in a written contract. Each written contract shall provide for reasonable consideration to the parties. In addition, each written contract shall be disclosed annually to participating members in a disclosure report containing the information described in subparagraph (H) of paragraph (3) of subdivision (c). The disclosure report shall be sent to participating members by first-class mail, postage prepaid, and shall be mailed separately from any statements, records, or other documents. The disclosure requirements of this subdivision shall apply to all existing and future written contracts.

(j) Upon request of the Commissioner of Corporations, an interindemnity arrangement shall immediately forward to the commissioner a current list of participating members, including the names, addresses, and telephone numbers of those members.

(k) Notwithstanding any provision to the contrary, whenever the membership of a cooperative organization, organized pursuant to Part 2 (commencing with Section 12200) of Division 3 of Title 1 of the Corporations Code and consisting solely of physicians and surgeons licensed in this state amounts to 2,000 or more members and the trust fund is at least forty million dollars ($40,000,000), which is available to the public for malpractice claims or other claims authorized by this section, the cooperative is authorized to admit members without a contribution to that trust fund if assessments are charged to each of those members within the first 50 months in an amount equal to the amount of the contribution to the reserve fund that would otherwise be required.

CHAPTER 508

An act to add Section 318 to the Corporations Code, relating to corporations.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. This act shall be known and may be cited as the Corporate Governance Parity Act of 1993.

SEC. 2. The Legislature finds and declares that although California women and minorities have made substantial gains in their efforts to achieve economic equality, they do not yet enjoy sufficient opportunities to contribute to society to an extent commensurate with their potential. Despite the progress already made toward gaining parity in access to educational opportunities, women and minorities continue to experience the effects of disparate treatment in employment. In particular, women and minorities remain underrepresented at the highest levels of corporate management, and continue to earn significantly less than their peers. Men continue to outnumber women on the boards of directors of the nation's largest corporations by a ratio of 24 to one and over 60 percent of those boards of directors have no minority members. The purpose of this act is to promote gender, racial, and ethnic parity in corporate governance by facilitating recruitment of qualified women and minorities to serve on corporate boards of directors.

SEC. 3. Section 318 is added to the Corporations Code, to read:

318. (a) The Secretary of State shall develop and maintain a registry of distinguished women and minorities who are available to serve on corporate boards of directors. As used in this section, "minority" means an ethnic person of color including American Indians, Asians (including, but not limited to, Chinese, Japanese, Koreans, Pacific Islanders, Samoans, and Southeast Asians), Blacks, Filipinos, and Hispanics.

(b) For each woman or minority who participates in the registry, the Secretary of State shall maintain information on his or her educational, professional, community service, and corporate governance background. That information may include, but is not limited to:

(1) Paid or volunteer employment.

(2) Service in elected public office or on public boards or commissions.

(3) Directorships, officerships, and trusteeships of business and nonprofit entities, including committee experience.

(4) Professional, academic, or community awards or honors.

(5) Publications.

(6) Government relations experience.
(7) Experience with corporate constituents.
(8) Any other areas of special expertise.

(c) In addition to the information subdivision (b) requires, each woman or minority who participates in the registry may disclose any number of personal attributes that may contribute to board diversity. Those attributes may include, but are not limited to, gender, physical disability, race, or ethnic origin.

(d) In addition to the information subdivision (b) requires, each woman or minority who participates in the registry may indicate characteristics of corporations for which he or she would consider, or is especially interested in, serving as a director. These characteristics may include, but are not limited to, company size, industry, geographic location, board meeting frequency, director time commitments, director compensation, director insurance or indemnification, or social policy concerns.

(e) Any woman or minority may nominate himself or herself to the registry by filing with the Secretary of State the information required by subdivision (b) on a form the secretary prescribes. Any registrant may attach a copy of his or her resume and up to two letters of recommendation to his or her registration form. Each registrant's registration form, together with any attached resume or letters of recommendation, shall constitute his or her registry transcript.

(f) The Secretary of State shall make appropriate rules requiring registrants to renew or update their filings with the registry, as necessary to ensure continued accuracy of registry information.

(g) The Secretary of State shall assign each registrant a file number, then enter the information described in subdivisions (b), (c), and (d) into a data base, using the registrant's file number to identify him or her. The registry data base shall not disclose any registrant's name or street address, but may list the city, county, or ZIP Code of his or her business or residence address. The secretary shall make data base information available to those persons described in subdivisions (i) and (j). The secretary may provide that access either by permitting direct data base searches or by performing data base searches on written request.

(h) The Secretary of State may also make information contained in the registry data base available to any person or entity qualified to transact business in California that regularly engages in the business of providing data base access or search services; provided, that data base access will not be construed to entitle the user to access to any registrant's transcript.

(i) The Secretary of State shall make information contained in a reasonable number of registrants' transcripts available to any corporation or its representative. A "representative" may be an attorney, an accountant, or a retained executive recruiter. A "retained executive recruiter" is an individual or business entity engaged in the executive search business that is regularly retained

to locate qualified candidates for appointment or election as corporate directors or executive officers.

(j) The Secretary of State may also grant access to a reasonable number of registrants' transcripts to any other person who demonstrates to the secretary's satisfaction that the person does both of the following:

(1) Seeks access to the registry in connection with an actual search for a corporate director.

(2) Intends to use any information obtained from the registry only for the purpose of finding qualified candidates for an open position on a corporate board of directors.

(k) The Secretary of State may employ reasonable means to verify that any party seeking access to registry transcript information is one of those specified in subdivision (i) or (j). To that end, the secretary may require a representative to identify its principal, but may not disclose that principal's identity to any other person.

(*l*) Upon written request specifying the registrant's file number, the Secretary of State shall provide any party entitled to access to registry transcripts with a copy of any registrant's transcript. The secretary may by rule or regulation specify other reasonable means by which persons entitled thereto may order copies of registrants' transcripts.

(m) Notwithstanding any other provision of law, no person shall be entitled to access to information the registry contains, except as this section specifically provides.

(n) The Secretary of State shall charge fees for registering with the registry, obtaining access to the registry data base, and obtaining copies of registrants' transcripts. The Secretary of State, in consultation with the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions, shall fix those fees by regulation. Fees shall be fixed so that the aggregate amount of all fees collected shall be sufficient to cover the total cost of administering the registry program. Registration fees shall be fixed so as to encourage qualified women and minorities to participate. Fees shall be deposited into the Secretary of State's Business Fee Fund.

(o) The Secretary of State may make any rule, regulation, guideline, or agreement the secretary deems necessary to carry out the purposes and provisions of this section.

(p) The Secretary of State may cooperate with the California Commission on the Status of Women, the California Council to Promote Business Ownership by Women, the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions, women's organizations, minority organizations, business and professional organizations, and any other individual or entity the secretary deems appropriate, for any of the following purposes:

(1) Promoting corporate use of the registry.

(2) Locating qualified women and minorities and encouraging

them to participate in the registry.

(3) Educating interested parties on the purpose and most effective use of the registry.

The secretary may also prepare and distribute publications designed to promote informed use of the registry.

(q) The Secretary of State may seek registrants' consent to be listed in a published directory of women and minorities eligible to serve as corporate directors, which will contain a summary of each listed registrant's qualifications. The secretary may periodically publish, or cause to be published, such a directory. Only those registrants who so consent in writing may be included in the directory. The printed directory shall be provided to any person upon payment of a fee, which the Secretary of State will determine by regulation, in consultation with the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions.

(r) The Secretary of State shall implement this section no later than January 1, 1995.

(s) At least once in each three-year period during which the registry is available for corporate use, the Secretary of State, in consultation with the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions, shall report to the Legislature on the extent to which the registry has helped women and minorities progress toward achieving parity in corporate board appointments or elections.

SEC. 4. This act does not impose any gender, racial, or ethnic quota or otherwise disqualify any person from entering or pursuing any business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin.

CHAPTER 509

An act to amend Section 5003.2 of the Public Utilities Code, relating to carriers, and making an appropriation therefor.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 5003.2 of the Public Utilities Code is amended to read:

5003.2. (a) Notwithstanding Section 5003.1, the commission shall require every highway carrier otherwise subject to Section 5003.1 for whom the commission does not establish minimum or maximum rates, or require rates to be on file with the commission, to pay a fee equal to $\frac{1}{10}$ of 1 percent of the amount of gross operating revenue.

(b) The commission may raise the fee imposed by Section 5003.1

upon those persons and corporations subject to that section for whom the commission establishes minimum or maximum rates or requires rates to be on file, up to a maximum of one-half of 1 percent of gross operating revenue, if the commission decides this increase is necessary to maintain adequate financing for the Transportation Rate Fund.

SEC. 2. This act is declaratory of existing law.

CHAPTER 510

An act to amend Sections 11166, 11166.5, and 11172 of, and to add Section 11165.16 to, the Penal Code, relating to child abuse and neglect reports.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 11165.16 is added to the Penal Code, to read:

11165.16. (a) For the purposes of this article, the following terms have the following meanings:

(1) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(2) "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 607f or 607g of the Civil Code.

(b) No firefighter, animal control officer, or humane society officer shall be subject to the reporting requirements of this article unless he or she has received training in identification and reporting of child abuse equivalent to that received by teachers and child care custodians.

SEC. 1.5. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (b), any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse, shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse

was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, or humane society officer who has knowledge of or who reasonably suspects that mental suffering has been inflicted upon a child or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practically possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(f) The reporting duties under this section are individual, and no

supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department. A county probation or welfare department also shall send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 2. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) On and after January 1, 1985, any person who enters into employment as a child care custodian, health practitioner, firefighter, animal control officer, or humane society officer, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a

statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in Section 11165.15, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The statement shall include all of the following provisions:

Section 11166 of the Penal Code requires any child care custodian, health practitioner, firefighter, animal control officer, or humane society officer, employee of a child protective agency, or child visitation monitor who has knowledge of, or observes, a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately, or as soon as practically possible, by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

"Child care custodian" includes teachers; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; administrative officers, supervisors of child welfare and attendance, or certificated pupil personnel employees of any public or private school; administrators of a public or private day camp; administrators and employees of public or private youth centers, youth recreation programs, or youth organizations; administrators and employees of public or private organizations whose duties require direct contact and supervision of children and who have been trained in the duties imposed by this article; licensees, administrators, and employees of licensed community care or child day care facilities; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; social workers, probation officers, or parole officers; employees of a school district police or security department; any person who is an administrator or a presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor; or a peace officer, as defined

in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, who is not otherwise described in this section.

"Health practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code; marriage, family, and child counselors; emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; psychological assistants registered pursuant to Section 2913 of the Business and Professions Code; marriage, family, and child counselor trainees as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; unlicensed marriage, family, and child counselor interns registered under Section 4980.44 of the Business and Professions Code; state or county public health employees who treat minors for venereal disease or any other condition; coroners; paramedics; and religious practitioners who diagnose, examine, or treat children.

"Child visitation monitor" means any person as defined in Section 11165.15.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by child protective agencies, public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in Section 11165.15, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The

person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

SEC. 3. Section 11172 of the Penal Code is amended to read:

11172. (a) No child care custodian, health practitioner, firefighter, animal control officer, humane society officer, employee of a child protective agency, child visitation monitor, or commercial film and photographic print processor who reports a known or suspected instance of child abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any such person who makes a report of child abuse known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse, or causing photographs to be taken of a suspected victim of child abuse, without parental consent, or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any child care custodian, health practitioner, firefighter, animal control officer, humane society officer, employee of a child protective agency, or child visitation monitor who, pursuant to a request from a child protective agency, provides the requesting agency with access to the victim of a known or suspected instance of child abuse shall not incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that even though it has provided immunity from liability to persons required to report child abuse, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of child abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a child care custodian, health practitioner, firefighter, animal control officer, humane society officer, employee of a child protective agency, child visitation monitor, or commercial film and photographic print

processor may present a claim to the State Board of Control for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) A court may award attorney's fees to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds this suit to be frivolous.

(e) Any person who fails to report an instance of child abuse which he or she knows to exist, or reasonably should know to exist, as required by this article, is guilty of a misdemeanor, punishable by confinement in a county jail for a term not to exceed six months, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be make from the State Mandates Claims Fund.

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

CHAPTER 511

An act to amend Section 42889 of, and to add Chapter 19 (commencing with Section 42950) to Part 3 of Division 30 of, the Public Resources Code, relating to tire haulers.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 42889 of the Public Resources Code is amended to read:

42889. The money in the fund shall, upon order of the Controller, be drawn therefrom for the payment of refunds under this chapter. The balance of the money in the fund shall be appropriated in the annual Budget Act to the board for expenditure for the following purposes:

(a) To pay the costs of administration of this chapter, not to exceed 5 percent of the total revenue deposited in the fund annually.

(b) In addition to payments authorized by subdivision (a), to pay the costs of administration associated with collection, making refunds, and auditing revenues in the fund, not to exceed 3 percent of the total revenue deposited in the fund, as provided in subdivision (b) of Section 42885.

(c) To pay the costs associated with operating the tire recycling program specified in Article 3 (commencing with Section 42870).

(d) To pay the costs associated with the development and enforcement of regulations relating to the storage of waste tires.

(e) To pay the costs of cleanup, abatement, or other remedial action related to the disposal of used whole tires.

(f) To make studies and conduct research directed at promoting and developing alternatives to the landfill disposal of used whole tires.

(g) To pay the costs associated with a statewide shredding program at authorized landfills and solid waste transfer stations.

(h) To pay the offsetting costs associated with a purchase preference granted by the state for materials manufactured from recycled tires, not to exceed one hundred thousand dollars ($100,000) annually.

(i) To pay the cost associated with implementing and operating a waste tire hauler program pursuant to Chapter 19 (commencing with Section 42950).

SEC. 2. Chapter 19 (commencing with Section 42950) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 19. TIRE HAULER REGISTRATION

Article 1. Definitions

42950. For purposes of this chapter, the following definitions apply:

(a) "Applicant" means any person seeking to register as a waste tire hauler.

(b) "Waste tire" means a tire that is not on the wheel of a vehicle and is no longer suitable for its original intended use due to wear, damage, defect, or deviation from the manufacturer's specifications, including, but not limited to, all used tires, altered wasted tires, recappable casings, and scrap tires. "Waste tire" includes tires that have been altered by processes including, but not limited to, shredding, chopping, and slicing.

(c) "Agricultural purposes" means the use of waste tires as bumpers on agricultural equipment or as a ballast to maintain covers or structures at an agricultural site.

(d) "Common carrier" means a "highway common carrier," as defined in Section 213 of the Public Utilities Code.

Article 2. Registration and General Provisions

42951. (a) On and after January 1, 1995, every person who engages in the transportation of waste tires shall hold a valid waste tire hauler registration, unless exempt as specified in Section 42954.

(b) A registered waste tire hauler who transports waste tires to a facility that is not a waste tire facility, as defined in Section 42808, a landfill authorized pursuant to Section 42866, a facility which is authorized to accept waste tires pursuant to a state or local agency permit, or a facility which lawfully accepts waste tires for reuse or disposal, shall be subject to the civil penalty imposed by Section 42962.

42952. Except as provided in Section 42954, on and after January 1, 1995, any person engaged in transporting waste tires shall comply with all of the following requirements:

(a) The person shall be registered as a waste tire hauler with the board.

(b) The person shall not advertise or represent himself or herself as being in the business of a waste tire hauler without being registered as a waste tire hauler by the board.

42953. On and after January 1, 1995, any person who gives, contracts, or arranges with another person to transport waste tires shall utilize only a person holding a waste tire hauler registration from the board, unless the hauler is exempt as specified in Section 42954.

42954. (a) A person who hauls waste tires is exempt from registration under this chapter if at least one of the following conditions is met:

(1) The person is a solid waste collector operating under a license or franchise from any local government and transports less than 10 waste tires at any one time.

(2) The person transports fewer than five waste tires at any one time.

(3) The person is the United States, the State of California, or any county, city, town, or municipality in the state, except when vehicles the public agency owns or operates are used as a waste tire carrier for hire.

(4) The waste tires were inadvertently mixed or commingled with solid waste and it is not economical or safe to remove or recover them.

(5) The vehicle originated outside the boundaries of the state and is destined for a point outside the boundaries of the state, if no waste tires are loaded or unloaded within the boundaries of the state.

(6) The person is hauling waste tires for agricultural purposes. However, notwithstanding Section 42961.5, a person hauling waste tires for agricultural purposes shall carry a manifest from the generator in the vehicle during transportation, which may be destroyed after delivery.

(7) The waste tires were hauled by a common carrier who transported something other than waste tires to an original destination point and then transported waste tires on the return part of the trip, and the revenue derived from the waste tires is incidental when compared to the revenue earned by the carrier.

(b) Any person who transports tires in violation of subdivision (b) of Section 42951 shall not be exempt pursuant to subdivision (a).

42955. An application for a new or renewed waste tire hauler registration shall be made on a form approved by the board. The application shall include, but not be limited to, all of the following:

(a) A vehicle description, vehicle identification number, vehicle license number, and the name of the registered vehicle owner for each vehicle used for transporting waste tires.

(b) The business name under which the hauler operates, and the business owners' name, address, and telephone number.

(c) Other business names under which the hauler operates.

(d) A bond in favor of the State of California in the amount of ten thousand dollars ($10,000). Proof of bond renewal shall be submitted with the application for annual renewal of a waste tire hauler registration.

(e) Any additional information required by the board.

42956. Upon approval of an application submitted pursuant to Section 42955, the board shall issue a waste tire hauler registration to be carried in the vehicle and a waste tire hauler decal to be permanently affixed on the driver's door of the vehicle.

Article 3. Renewal, Suspension, and Revocation

42958. The initial waste tire hauler registration issued pursuant to this chapter shall be valid from the date of issuance to January 1 of the subsequent calendar year. Subsequent renewals shall be valid for one calendar year. The registration shall be renewed prior to its expiration.

42959. The board may refuse to issue or renew a waste tire hauler registration on any grounds for which it may suspend or revoke a registration.

42960. The board may suspend or revoke a waste tire hauler registration in accordance with the procedures in Chapter 4 (commencing with Section 44300) of Part 4, if the holder of the registration has done any of the following acts:

(a) Committed any violations of, or failed to comply with any requirements of, this chapter.

(b) Aided, abetted, or permitted any violation of this chapter.

(c) Aided, abetted, or permitted a failure to comply with this chapter, if the failure of compliance shows a repeating or recurring occurrence or may pose a threat to public health or safety or the environment.

(d) Committed any misrepresentation or omission of a significant fact or other required information in the application for a waste tire hauler registration.

42961. If the board denies an application for registration, the applicant may request a hearing by the board.

42961.5. The board shall develop a waste tire manifest system for registered waste tire haulers that complies with all of the following conditions:

(a) The board shall develop a waste tire manifest form that shall be completed and shall accompany each shipment of waste tires from the point of origin to the processing, collection, storage, or disposal facility.

(b) The manifest form shall be signed by the generator, the waste tire hauler, and the processing, collection, storage, or disposal facility. Each party shall retain one copy of the manifest form.

(c) If waste tires are transported from a collection center, a new manifest shall be used until the waste tires reach a final processing, collection, storage, or disposal facility.

(d) No transporter shall receive waste tires and no person or facility shall accept waste tires for processing, collection, storage, or disposal without a properly completed manifest form, with the exception that the processor may accept waste tires that are delivered by a waste tire hauler without a manifest, if the processor reports the name of the waste tire hauler and the vehicle license number to the board.

(e) A waste tire hauler shall not transport any waste tires without having at all times, in the vehicle transporting the waste tires, a copy of the manifest for the waste tires.

(f) Each party required to sign a manifest shall maintain it for three years and shall make it available for review during regular business hours.

Article 4. Enforcement

42962. (a) Any person who intentionally, or negligently, violates any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, shall be liable for a civil penalty not to exceed ten thousand dollars ($10,000) for each violation of a separate provision or for continuing violations for each day that violation continues. Liability under this section may be imposed in a civil action.

(b) In addition to the civil penalty which may be imposed pursuant to subdivision (a), the board may impose civil penalties administratively in an amount not to exceed one thousand dollars ($1,000) for each violation of a separate provision or for continuing violations for each day that violation continues, for any person who intentionally or negligently violates any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter. The board shall adopt regulations which specify the procedures and amounts for the imposition of administrative civil penalties pursuant to this subdivision.

42963. This chapter, or any regulations adopted pursuant to Section 42966, is not a limitation on the power of a city, county, or district to impose and enforce reasonable land use conditions or restrictions on facilities that handle waste tires in order to protect the public health and safety or the environment, including preventing or mitigating potential nuisances, if the conditions or restrictions do not conflict with, or impose less stringent requirements than, this chapter or those regulations. However, this chapter, including any regulations that are adopted pursuant to Section 42966, is intended to establish a uniform statewide program for the regulation of waste tire haulers that will prevent the illegal disposal of tires, but which will not subject tire haulers to multiple registration or manifest requirements. Therefore, any local laws regulating the transportation of waste tires are preempted by this chapter.

Article 5. Financial Provisions

42964. The board may expend funds from the California Tire Recycling Management Fund, upon appropriation by the Legislature, for purposes of implementation of this chapter.

Article 6. Administration

42966. The board shall administer this chapter. The board may adopt any regulations necessary or useful to carry out this chapter or any of the board's duties or responsibilities imposed pursuant to this

chapter. The board shall initially, as soon as possible, adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for safety, and general welfare. Emergency regulations adopted pursuant to this section shall remain in effect for a period not to exceed 120 days.

42967. (a) The costs of administering this chapter shall be paid from fees deposited in the California Tire Recycling Management Fund pursuant to subdivision (i) of Section 42889.

(b) The board may develop a legislative proposal for an alternative fee system for the payment of the costs of administering this chapter and submit that proposal to the Legislature for its consideration as part of the 1994–95 fiscal year budget review process.

CHAPTER 512

An act to add Section 1192.10 to the Insurance Code, relating to insurance.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 1192.10 is added to the Insurance Code, to read:

1192.10. (a) Excess funds investments may be made in securities evidencing an undivided interest in, the right to receive payments from, or payable primarily from distributions on a pool of financial assets held by an unaffiliated business entity, other than those authorized by Section 1192.6, if all of the following conditions are met:

(1) The business entity is not a sole proprietorship and is established solely for the purpose of acquiring specific types of financial assets, issuing securities representing an undivided interest in, or right to receive cash flows from, those assets, and engaging in related activities.

(2) The pool of assets consists solely of interest-bearing obligations or other contractual obligations representing the right to receive payment from the assets.

(3) The investment is rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization approved by the Securities and Exchange Commission and within one of the two highest categories established by the

securities valuation office of the National Association of Insurance Commissioners.

(b) No investment under this section may be made if, as a result of giving effect to that investment, the aggregate amount of investments then held by the insurer under this section would exceed 10 percent of its admitted assets.

(c) Investments authorized by this section shall not be subject to subdivision (c) of Section 1196.

CHAPTER 513

An act to amend Sections 20036, 21020.5, 21020.6, 21361, and 21405 of, and to add Sections 20022.15 and 21100.55 to, the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 20022.15 is added to the Government Code, to read:

20022.15. A partial disability retirement program is established by Section 21020.6 for state employees subject to Section 21020.5. The benefits paid under this program shall be paid pursuant to Sections 21020.5 and 21020.6 and shall not be considered compensation for purposes of Section 20022.

SEC. 2. Section 20036 of the Government Code is amended to read:

20036. "Benefit" means the retirement allowance, basic death benefit, limited death benefit, special death benefit, any monthly allowance for survivors of a member or retired person, the insurance benefit, the partial disability retirement program payment, or refund of accumulated contributions.

SEC. 3. Section 21020.5 of the Government Code is amended to read:

21020.5. (a) Notwithstanding any other provision of law, a state member shall not be retired for industrial disability for an illness or injury that occurs on or after January 1, 1993, unless the member is incapacitated for the performance of duty in any employment with the state employer and the disability is of permanent or extended and uncertain duration, as determined by the Department of Personnel Administration. This section shall only apply to state safety, state industrial, and state miscellaneous members employed in any state bargaining units for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this section. The Director of the Department of Personnel Administration may

adopt rules regarding job placement and other related activities necessary for the administration of this section and Section 21100.55.

(b) A state member who, because of the enactment of this section is no longer eligible to retire for industrial disability and accepts alternate employment with the state in which the compensation is less than that received in the position held at the time of the illness or injury, shall, upon certification of the Department of Personnel Administration to the board, become entitled to benefits under the partial disability retirement program set forth in Section 21020.6.

(c) The employee shall have the right of appeal to the Department of Personnel Administration regarding: (1) the requirement to participate or (2) the exclusion from participating in the program described in this section and Section 21020.6.

(d) For all other disputes relative to this section and Section 21020.6, the employee shall seek administrative remedy from his or her appointing power through the departmental complaint process.

(e) The appointing power of the affected employee shall reimburse the Department of Personnel Administration for any costs associated with the administration of this provision.

SEC. 4. Section 21020.6 of the Government Code is amended to read:

21020.6. (a) Any state member who is subject to Section 21020.5 and does not qualify for industrial disability retirement under this part, or is reinstated from industrial disability retirement pursuant to Section 21100.55, and accepts another job in state service, shall be paid a partial disability retirement program benefit payment from this system in an amount, to be calculated by the Department of Personnel Administration and certified to the board, that, when added to the salary earned by the employee in the current state position, would be equal to the state salary earned by the member at the time of becoming unable to perform the duties of his or her previous position. This supplemental payment shall not result in the member being deemed to be retired.

(b) The partial disability retirement program benefit payments made under this section shall be paid for by the state employer in the same manner as all other state retirement benefits are funded.

SEC. 5. Section 21100.55 is added to the Government Code, to read:

21100.55. Notwithstanding any other section in Article 3 (commencing with Section 21020) or in this article, the Department of Personnel Administration may reinstate a person who has retired for industrial disability pursuant to Section 21292.4, within 12 months after the effective date of retirement, if it has identified an available position with duties that the employee is able to perform. Upon reinstatement, the person shall become entitled to benefits under the partial disability retirement program pursuant to Section 21020.6.

SEC. 6. Section 21361 of the Government Code is amended to read:

21361. The basic death benefit is payable in all cases where the

retirement system is liable under Section 21360 for either the basic or a special death benefit and the special death benefit is not payable.

The basic death benefit shall consist of:

(a) The accumulated contributions of the member.

(b) If the member is not an insured member, or is an insured member eligible for service retirement or the member is subject to benefits pursuant to Section 21365.55, an amount, provided from contributions by the state, or a contracting agency, equal to one-twelfth of the annual compensation earnable by the deceased during the 12 months immediately preceding his or her death, or the compensation earnable by the member at the time of becoming eligible for benefits pursuant to Section 21020.6 if higher, multiplied by the number of completed years of current service credited to the member, but not to exceed one-half of the compensation. If the member is an insured member who is ineligible for service retirement and is also credited with service as a local member only that service shall be used in computing the amount under this subdivision and that amount shall not be a part of the basic death benefit payable with respect to the insured member.

(c) If the member is a state member, other than a school member, who dies after becoming eligible for retirement with more than five but less than six years credited service, an amount equal to 50 percent of the annual compensation earnable by the deceased member during the 12 months immediately preceding his or her death.

The basic death benefit for a member who dies under the circumstances described in paragraph (5) of subdivision (a) of Section 21360 shall not exceed an amount which when added to the death benefit paid for the member under the other system equals the maximum death benefit payable under that system, if the death is not the result of injury or disease arising out of and in the course of his or her employment under that system. However, the benefit shall be at least equal to his or her accumulated contributions. The basic death benefit for the member shall be the amount of his or her accumulated contributions if death is the result of disease or injury arising out of and in the course of employment under the other system.

SEC. 7. Section 21405 of the Government Code is amended to read:

21405. The insurance benefit shall be the sum of the following amounts:

(a) Five thousand dollars ($5,000); and

(b) An amount equal to 50 percent of the annual compensation earnable by the deceased member during the 12 months immediately preceding his or her death or the compensation earnable by the member at the time of becoming eligible for benefits pursuant to Section 21020.6 if higher, or if a member also has state service in an employment in which employees are ineligible to be insured members, a proportionate part of that amount in the ratio of eligible service to total service.

No amount shall be paid under this subdivision if the member is eligible for service retirement or the member is subject to benefits pursuant to Section 21365.55.

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

CHAPTER 514

An act to add Section 84040.3 to the Education Code, relating to community colleges.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 84040.3 is added to the Education Code, to read:

84040.3. Each organization that is described in Section 501 (c) (3) of the Internal Revenue Code of 1954, 26 U.S.C. 501 (c) (3), and that is recognized by the governing board of a community college district as having a formal relationship with, and that is working on behalf of, the district or a community college within the district, shall file a copy of its audited financial report for the previous fiscal year or its annual financial report for the previous fiscal year with the governing board on or before April 1 of each year.

CHAPTER 515

An act to amend Section 1637 of, to add Article 15.5 (commencing with Section 1757.1) to Chapter 5 of Part 2 of Division 1 of, and to add Sections 1810.7 and 1810.9 to, the Insurance Code, relating to insurance.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 1637 of the Insurance Code is amended to read:

1637. An organization may hold any license or licenses necessary

to act in the following capacities under this chapter and no others:

(a) A license to act as a life agent.

(b) A license to act as a fire and casualty broker-agent.

(c) A license to act as a cargo shipper's agent.

SEC. 2. Article 15.5 (commencing with Section 1757.1) is added to Chapter 5 of Part 2 of Division 1 of the Insurance Code, to read:

Article 15.5. Cargo Shippers' Agents

1757.1. A limited license may be issued to a natural person or to an organization who or which acts as an agent on behalf of cargo owners or shippers, or both. The limited license shall authorize the cargo owner's or shipper's agent to procure cargo insurance only on behalf of a cargo owner or shipper for whom the agent is also arranging for the carriage of goods. The limited license shall authorize the cargo owner's or shipper's agent only to procure cargo insurance, perform related document preparation, and assist the cargo owners or shippers, or both, with the filing of claims or preparation of proofs of loss in connection with filing claims and performing similar claims activities.

1757.2. A limited license shall be applied for and renewed in the same manner as is provided in this chapter for a licensee to act as a fire and casualty broker-agent, except that an applicant for a limited license as a cargo shipper's agent need not pass a qualifying examination and is exempt from the prelicensing and continuing education requirements. The fee for filing an application shall be nineteen dollars ($19) for each year or fraction thereof of the term of the license applied for.

1757.3. The commissioner may make reasonable rules and regulations necessary for the convenient administration of the provisions of this article respecting the licensing and renewal of licenses of cargo shippers' agents.

SEC. 3. Section 1810.7 is added to the Insurance Code, to read:

1810.7. (a) In order to be eligible to take the examination required to be licensed under this chapter, the applicant shall have completed not less than 12 hours of classroom education in subjects pertinent to the duties and responsibilities of a bail licensee, including, but not limited to, all laws and regulations related thereto, rights of the accused, and ethics. Additionally, a licensee shall complete annually not less than six hours of continuing classroom education in these subjects prior to renewal of his or her license. This continuing education requirement shall not include a written examination.

(b) The commissioner shall biannually approve or disapprove one or more statewide professional organizations or other providers familiar with bail law to provide education for licensure as required by this section. The commissioner may, at any time, disapprove any provider who is not qualified or whose course outlines are not approved, who is not of good business reputation, or who is lacking

in integrity, honesty, or competency. The commissioner shall biannually approve or disapprove the course outlines and schedule of classes to be provided.

(c) The statewide professional organization or other providers responsible for providing education for licensure under this chapter shall consult with the California State Sheriffs' Association, the California District Attorneys Association, the California Advisory Board of Surety Agents, and the California Bail Agents Association, prior to submission of the course outlines for approval by the commissioner. The bail license fee shall be increased, the amount of which shall be determined by the commissioner, which shall be deposited in the Insurance Fund for the purposes of recovering the administrative costs for meeting the conditions and purposes of this section. Providers of education or continuing education shall offer courses to all applicants at the same course fees.

(d) Any person who falsely represents to the commissioner that compliance with this section has been met shall be subject, after notice and hearing, to the penalties and fines set out in Section 1814.

(e) The commissioner may make reasonable rules and regulations necessary, advisable, and convenient for the administration and enforcement of this chapter.

SEC. 4. Section 1810.9 is added to the Insurance Code, to read:

1810.9. A renewal license shall be issued by the commissioner to a licensee upon proof of current licensure, payment of a renewal fee, and completion of the continuing education requirements as required by subdivision (a) of Section 1810.7.

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

CHAPTER 516

An act to add Sections 10127.10, 10127.11, 10127.12, and 10127.13 to the Insurance Code, relating to insurance.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 10127.10 is added to the Insurance Code, to read:

10127.10. (a) Every policy of individual life insurance which is initially delivered or issued for delivery to a senior citizen in this state on and after January 1, 1994, shall have printed thereon or attached thereto a notice stating that, after receipt of the policy by the owner, the policy may be returned by the owner for cancellation by delivering it or mailing it to the insurer or to the agent through whom it was purchased. The period of time set forth by the insurer for return of the policy by the insured shall be clearly stated on the notice and this period shall be not less than 30 days. The insured may return the policy to the insurer by mail or otherwise at any time during the period specified in the notice. By delivering or mailing the policy pursuant to this section during the cancellation period, the owner shall void the policy from the beginning, and the parties shall be in the same position as if no policy had been issued. All premiums paid and any policy fee paid for the policy shall be refunded by the insurer to the owner within 30 days from the date that the insurer is notified that the insured has canceled the policy.

(b) This section applies to all policies issued or delivered to senior citizens in this state on or after January 1, 1994. All policies subject to this section which are in effect on January 1, 1994, shall be construed to be in compliance with this section, and any provision in any policy which is in conflict with this section shall be of no force or effect.

(c) Every life insurance policy subject to this section which is delivered or issued for delivery in this state shall have the following notice either printed on the cover page or policy jacket in 12-point bold print with one inch of space on all sides or printed on a sticker that is affixed to the cover page or policy jacket:

"IMPORTANT

YOU HAVE PURCHASED A LIFE INSURANCE POLICY. CAREFULLY REVIEW IT FOR LIMITATIONS.

THIS POLICY MAY BE RETURNED WITHIN 30 DAYS FROM THE DATE YOU RECEIVED IT FOR A FULL REFUND EITHER BY RETURNING IT TO THE AGENT OR THE

INSURANCE COMPANY. AFTER 30 DAYS, CANCELLATION MAY RESULT IN A SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER CHARGE."

(d) This section does not apply to individual life insurance policies issued in connection with a credit transaction or issued under a contractual policy-change or conversion privilege provision contained in a policy. Additionally, this section shall not apply to noncontributory employer group life insurance contracts.

(e) For purposes of this chapter, a senior citizen means an individual who is 60 years of age or older.

SEC. 2. Section 10127.11 is added to the Insurance Code, to read:

10127.11. Every insurer and life agent offering for sale life insurance policies that are initially delivered or issued for delivery to senior citizens in this state on and after January 1, 1994, with the use of nonpreprinted illustrations of nonguaranteed values shall disclose on those illustrations or on an attached cover sheet, in bold or underlined capitalized print, or in the form of a contrasting color sticker, with one-half inch space on all four sides, the following statement:

"THIS IS AN ILLUSTRATION ONLY. AN ILLUSTRATION IS NOT INTENDED TO PREDICT ACTUAL PERFORMANCE. INTEREST RATES, DIVIDENDS, AND VALUES SET FORTH IN THE ILLUSTRATION ARE NOT GUARANTEED."

All preprinted policy illustrations shall contain this notice in bold 12-point print with one-half inch space on all four sides and shall be printed on the illustration form itself. All illustrations containing nonguaranteed values shall show the guaranteed minimum interest rate column in bold print. All other columns used in the illustration shall be in standard print.

SEC. 3. Section 10127.12 is added to the Insurance Code, to read:

10127.12. Whenever an insurer provides an annual statement to a senior citizen policyowner, the insurer shall also provide the current accumulation value and the current cash surrender value.

SEC. 4. Section 10127.13 is added to the Insurance Code, to read:

10127.13. All life insurance policies for senior citizens which contain a surrender charge period shall disclose the surrender period and all penalties associated therewith in bold 12-point print on the cover sheet of the policy.

CHAPTER 517

An act to add Chapter 8 (commencing with Section 885) to Division 1 of, to repeal Article 3.5 (commencing with Section 156) of Chapter 1 of Division 1 of, and to repeal Chapter 8 (commencing with Section 2370) of Division 3 of, the Streets and Highways Code, and to amend Sections 21207 and 21211 of the Vehicle Code, relating to nonmotorized transportation.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Article 3.5 (commencing with Section 156) of Chapter 1 of Division 1 of the Streets and Highways Code is repealed.

SEC. 2. Chapter 8 (commencing with Section 885) is added to Division 1 of the Streets and Highways Code, to read:

CHAPTER 8. NONMOTORIZED TRANSPORTATION

Article 1. General Provisions

885. The Legislature hereby finds and declares that traffic congestion, air pollution, noise pollution, public health, energy shortages, consumer costs, and land-use considerations resulting from a primary reliance on the automobile for transportation are each sufficient reasons to provide for multimodal transportation systems.

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

(a) California's bicycle programs have not been fully developed or funded.

(b) The Legislature and Congress have enacted laws to reduce traffic congestion and improve air quality.

(c) The components of a successful bicycle program include engineering and design of safe facilities, education of bicyclists, and the motoring public on lawful use of the highways, and enforcement of traffic laws.

(d) Efforts to improve safety and convenience for nonmotorized transportation users are a proper use of transportation funds.

(e) The design and maintenance of many of our bridges and highways present physical obstacles to use by bicycles.

(f) The bicycle is a legitimate transportation mode on public roads and highways.

(g) Bicycle transportation can be an important, low-cost strategy to reduce reliance on the single-passenger automobile and can contribute to a reduction in air pollution and traffic congestion.

886. There is in the department a bicycle facilities coordinator who is responsible for the administration of bicycle-related activities

of the department.

Article 2. Nonmotorized Transportation Facilities

887. As used in this chapter, "nonmotorized transportation facility" means a facility designed primarily for the use of pedestrians, bicyclists, or equestrians. It may be designed primarily for one or more of those uses.

887.2. The department, in cooperation with local agencies, shall publish a statewide map illustrating state highway routes available for the use of bicyclists and, where bicyclists are prohibited from using a state highway, illustrating, in such a case, safe, alternate routes available to the bicyclist.

887.4. Prior to December 31 of each year, the department shall prepare and submit an annual report to the Legislature summarizing programs it has undertaken for the development of nonmotorized transportation facilities, including a summary of major and minor projects. The report shall document all state funding for bicycle programs, including funds from the Bicycle Lane Account, the Transportation Planning and Development Account, and the Clean Air Transportation Improvement Act. The report shall also summarize the existing directives received by the department from the Federal Highway Administration concerning the availability of federal funds for the programs, together with an estimate of the fiscal impact of the federal participation in the programs.

887.6. Upon the request of a public agency, as defined by Section 6500 of the Government Code, the department may enter into an agreement with the agency for the construction and maintenance of nonmotorized transportation facilities which generally follow a state highway right-of-way where the department has determined that the facility will improve safety and convenience for bicyclists.

The department's contribution, if any, to the cost of constructing the nonmotorized facilities shall be based upon a finding that the traffic safety or capacity of the highway will be increased. The agreements may provide for the handling and accounting of funds, the acquisition or conveyance of right-of-way, maintenance, and any other phase of the project.

887.8. (a) After consulting with the law enforcement agency having primary traffic law enforcement responsibility with respect to the state highway, the department may construct and maintain nonmotorized transportation facilities approximately paralleling that highway.

(b) Where the traffic safety or capacity of the highway would be increased, the department shall pay for the construction and maintenance of nonmotorized transportation facilities approximately paralleling the highway.

(c) The Legislature finds and declares that the construction and maintenance of nonmotorized transportation facilities constitute a highway purpose under Article XIX of the California Constitution,

and justify the expenditure of highway funds and the exercise of the power of eminent domain therefor.

888. The department shall not construct a state highway as a freeway that will result in the severance or destruction of an existing major route for nonmotorized transportation traffic and light motorcycles, unless it provides a reasonable, safe, and convenient alternate route or such a route exists.

888.2. The department shall also incorporate nonmotorized transportation facilities in the design of freeways on the state highway system along corridors where nonmotorized facilities do not exist, upon a finding that the facilities would conform to the California Recreational Trails System Plan specified in Section 5070.7 of the Public Resources Code or upon a finding, following a public hearing, that the facilities would conform to the master plans of local agencies for the development of nonmotorized facilities and would not duplicate existing or proposed routes, and that community interests would be enhanced by the construction of the facilities.

The department shall establish an annual priority list of projects to be funded pursuant to this section, which shall primarily benefit bicyclists rather than other highway users.

888.4. Each annual budget prepared pursuant to Section 165 shall include an amount of not less than three hundred sixty thousand dollars ($360,000) for the construction of nonmotorized transportation facilities to be used in conjunction with the state highway system.

888.8. The department may enter into any agreements, execute any documents, establish and manage any accounts or deposits, or take any other action that may be appropriate to receive and expend funds from the federal government in connection with state or local agency bicycle programs and nonmotorized transportation projects for which federal funds are available. The department may undertake demonstration projects and perform technical studies.

Article 3. California Bicycle Transportation Act

890. It is the intent of the Legislature, in enacting this article, to establish a bicycle transportation system. It is the further intent of the Legislature that this transportation system shall be designed and developed to achieve the functional commuting needs of the employee, student, business person, and shopper as the foremost consideration in route selection, to have the physical safety of the bicyclist and bicyclist's property as a major planning component, and to have the capacity to accommodate bicyclists of all ages and skills.

890.2. As used in this chapter, "bicycle" means a device upon which any person may ride, propelled exclusively by human power through a belt, chain, or gears, and having either two or three wheels in a tandem or tricycle arrangement.

890.3. As used in this article, "bicycle commuter" means a person making a trip by bicycle primarily for transportation purposes,

including, but not limited to, travel to work, school, shopping, or other destination that is a center of activity, and does not include a trip by bicycle primarily for physical exercise or recreation without such a destination.

890.4. As used in this article, "bikeway" means all facilities that provide primarily for bicycle travel. For purposes of this article, bikeways shall be categorized as follows:

(a) Class I bikeways, such as a "bike path," which provide a completely separated right-of-way designated for the exclusive use of bicycles and pedestrians with crossflows by motorists minimized.

(b) Class II bikeways, such as a "bike lane," which provide a restricted right-of-way designated for the exclusive or semiexclusive use of bicycles with through travel by motor vehicles or pedestrians prohibited, but with vehicle parking and crossflows by pedestrians and motorists permitted.

(c) Class III bikeways, such as an onstreet or offstreet "bike route," which provide a right-of-way designated by signs or permanent markings and shared with pedestrians or motorists.

890.6. The department, in cooperation with county and city governments, shall establish minimum safety design criteria for the planning and construction of bikeways and roadways where bicycle travel is permitted. The criteria shall include, but not be limited to, the design speed of the facility, minimum widths and clearances, grade, radius of curvature, pavement surface, actuation of automatic traffic control devices, drainage, and general safety. The criteria shall be updated biennially, or more often, as needed.

890.8. The department shall establish uniform specifications and symbols for signs, markers, and traffic control devices to designate bikeways, regulate traffic, improve safety and convenience for bicyclists, and alert pedestrians and motorists of the presence of bicyclists on bikeways and on roadways where bicycle travel is permitted.

891. All city, county, regional, and other local agencies responsible for the development or operation of bikeways or roadways where bicycle travel is permitted shall utilize all minimum safety design criteria and uniform specifications and symbols for signs, markers, and traffic control devices established pursuant to Sections 890.6 and 890.8.

891.2. A city or county may prepare a bicycle transportation plan, which shall include, but not be limited to, the following elements:

(a) The estimated number of existing bicycle commuters in the plan area and the estimated increase in the number of bicycle commuters resulting from implementation of the plan.

(b) A map and description of existing and proposed land use and settlement patterns which shall include, but not be limited to, locations of residential neighborhoods, schools, shopping centers, public buildings, and major employment centers.

(c) A map and description of existing and proposed bikeways.

(d) A map and description of existing and proposed end-of-trip

bicycle parking facilities. These shall include, but not be limited to, parking at schools, shopping centers, public buildings, and major employment centers.

(e) A map and description of existing and proposed bicycle transport and parking facilities for connections with and use of other transportation modes. These shall include, but not be limited to, parking facilities at transit stops, rail and transit terminals, ferry docks and landings, park and ride lots, and provisions for transporting bicyclists and bicycles on transit or rail vehicles or ferry vessels.

(f) A map and description of existing and proposed facilities for changing and storing clothes and equipment. These shall include, but not be limited to, locker, restroom, and shower facilities near bicycle parking facilities.

(g) A description of bicycle safety and education programs conducted in the area included within the plan, efforts by the law enforcement agency having primary traffic law enforcement responsibility in the area to enforce provisions of the Vehicle Code pertaining to bicycle operation, and the resulting effect on accidents involving bicyclists.

(h) A description of the extent of citizen and community involvement in development of the plan, including, but not limited to, letters of support.

(i) A description of how the bicycle transportation plan has been coordinated and is consistent with other local or regional transportation, air quality, or energy conservation plans, including, but not limited to, programs that provide incentives for bicycle commuting.

(j) A description of the projects proposed in the plan and a listing of their priorities for implementation.

(k) A description of past expenditures for bicycle facilities and future financial needs for projects that improve safety and convenience for bicycle commuters in the plan area.

891.4. (a) A city or county that has prepared a bicycle transportation plan pursuant to Section 891.2 may submit the plan to the county transportation commission or transportation planning agency for approval. The city or county may submit an approved plan to the department in connection with an application for funds for bikeways and related facilities which will implement the plan. If the bicycle transportation plan is prepared, and the facilities are proposed to be constructed, by a local agency other than a city or county, the city or county may submit the plan for approval and apply for funds on behalf of that local agency.

(b) The department may grant funds applied for pursuant to subdivision (a) on a matching basis which provides for the applicant's furnishing of funding for 10 percent of the total cost of constructing the proposed bikeways and related facilities. The funds may be used, where feasible, to apply for and match federal grants or loans.

891.8. The governing body of a city, county, or local agency may do all of the following:

(a) Establish bikeways.

(b) Acquire, by gift, purchase, or condemnation, land, real property, easements, or rights-of-way to establish bikeways.

(c) Establish bikeways pursuant to Section 21207 of the Vehicle Code.

892. (a) Rights-of-way established for other purposes by cities, counties, or local agencies shall not be abandoned unless the governing body determines that the rights-of-way or parts thereof are not useful as a nonmotorized transportation facility.

(b) No state highway right-of-way shall be abandoned until the department first consults with the local agencies having jurisdiction over the areas concerned to determine whether the right-of-way or part thereof could be developed as a nonmotorized transportation facility. If an affirmative determination is made, before abandoning the right-of-way, the department shall first make the property available to local agencies for development as nonmotorized transportation facilities in accordance with Sections 104.15 and 887.6 of this code and Section 14012 of the Government Code.

892.2. The Bicycle Lane Account is continued in existence in the State Transportation Fund, and, notwithstanding Section 13340 of the Government Code, the money in the account is continuously appropriated to the department for expenditure for the purposes specified in Section 892.4. Unexpended moneys shall be retained in the account for use in subsequent fiscal years.

892.4. The department shall allocate and disburse moneys from the Bicycle Lane Account according to the following priorities:

(a) To the department, the amounts necessary to administer this article, not to exceed 1 percent of the funds expended per year.

(b) To counties and cities, for bikeways and related facilities, planning, safety and education, in accordance with Section 891.4.

892.5. The Bikeway Account, created in the State Transportation Fund by Chapter 1235 of the Statutes of 1975, is continued in effect, and, notwithstanding Section 13340 of the Government Code, money in the account is hereby continuously appropriated to the department for expenditure for the purposes specified in this chapter. Unexpended money shall be retained in the account for use in subsequent fiscal years.

892.6. The Legislature finds and declares that the construction of bikeways pursuant to this article constitutes a highway purpose under Article XIX of the California Constitution and justifies the expenditure of highway funds therefor.

893. The department shall disburse the money from the Bicycle Lane Account pursuant to Section 891.4 for projects that improve the safety and convenience of bicycle commuters, including, but not limited to, any of the following:

(a) New bikeways serving major transportation corridors.

(b) New bikeways removing travel barriers to potential bicycle

commuters.

(c) Secure bicycle parking at employment centers, park-and-ride lots, rail and transit terminals, and ferry docks and landings.

(d) Bicycle-carrying facilities on public transit vehicles.

(e) Installation of traffic control devices to improve the safety and efficiency of bicycle travel.

(f) Elimination of hazardous conditions on existing bikeways.

(g) Planning.

(h) Improvement and maintenance of bikeways.

In recommending projects to be funded, due consideration shall be given to the relative cost-effectiveness of proposed projects.

893.2. The department shall not finance projects with the money in accounts continued in existence pursuant to this article which could be financed appropriately pursuant to Article 2 (commencing with Section 887), or fully financed with federal financial assistance.

893.4. If available funds are insufficient to finance completely any project whose eligibility is established pursuant to Section 893, the project shall retain its priority for allocations in subsequent fiscal years.

893.6. The department shall make a reasonable effort to disburse funds in general proportion to population. However, no applicant shall receive more than 25 percent of the total amounts transferred to the Bicycle Lane Account in a single fiscal year.

894. The department may enter into an agreement with any city or county concerning the handling and accounting of the money disbursed pursuant to this article, including, but not limited to, procedures to permit prompt payment for the work accomplished.

894.2. The department, in cooperation with county and city governments, shall adopt the necessary guidelines for implementing this article.

SEC. 3. Chapter 8 (commencing with Section 2370) of Division 3 of the Streets and Highways Code is repealed.

SEC. 4. Section 21207 of the Vehicle Code is amended to read:

21207. (a) This chapter does not prohibit local authorities from establishing, by ordinance or resolution, bicycle lanes separated from any vehicular lanes upon highways, other than state highways as defined in Section 24 of the Streets and Highways Code and county highways established pursuant to Article 5 (commencing with Section 1720) of Chapter 9 of Division 2 of the Streets and Highways Code.

(b) Bicycle lanes established pursuant to this section shall be constructed in compliance with Section 891 of the Streets and Highways Code.

SEC. 5. Section 21211 of the Vehicle Code is amended to read:

21211. (a) No person shall stop, stand, sit, or loiter upon any class I bikeway, as defined in subdivision (a) of Section 890.4 of the Streets and Highways Code, or any other public or private bicycle path or trail, if the stopping, standing, sitting, or loitering impedes or blocks the normal and reasonable movement of any bicyclist.

(b) No person shall place or park any bicycle, vehicle, or any other object upon any bikeway or bicycle path or trail, as specified in subdivision (a), which impedes or blocks the normal and reasonable movement of any bicyclist unless the placement or parking is necessary for safe operation or is otherwise in compliance with the law.

(c) This section does not apply to drivers or owners of utility or public utility vehicles, as provided in Section 22512.

(d) This section does not apply to owners or drivers of vehicles who make brief stops while engaged in the delivery of newspapers to customers along the person's route.

CHAPTER 518

An act to add Article 9.5 (commencing with Section 6157) to Chapter 4 of Division 3 of the Business and Professions Code, relating to attorneys.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Article 9.5 (commencing with Section 6157) is added to Chapter 4 of Division 3 of the Business and Professions Code, to read:

Article 9.5. Legal Advertising

6157. As used in this article, the following definitions apply:

(a) "Member" means a member in good standing of the State Bar and includes the terms "lawyer" and "attorney" and includes any agent of the member and any law firm or law corporation doing business in the State of California.

(b) "Advertise" or "advertisement" means any communication, disseminated by television or radio, by any print medium including, but not limited to, newspapers and billboards, or by means of a mailing directed generally to members of the public and not to a specific person, that solicits employment of legal services provided by a member, and is directed to the general public and is paid for by, or on the behalf of, the member.

6157.1. No advertisement shall contain any false, misleading, or deceptive statement or omit to state any fact necessary to make the statements made, in light of circumstances under which they are made, not false, misleading, or deceptive.

6157.2. No advertisement shall contain or refer to any of the following:

(a) Any guarantee or warranty regarding the outcome of a legal

matter as a result of representation by the member.

(b) Statements or symbols stating that the member featured in the advertisement can generally obtain immediate cash or quick settlements.

(c) An impersonation of the name, voice, photograph, or electronic image of any person directly or implicitly purporting to be that of the member or client of the member featured in the advertisement, or a dramatization of events, unless disclosure of the impersonation or dramatization is made in the advertisement.

(d) A statement that a member offers representation on a contingent basis unless the statement also advises whether a client will be held responsible for any costs advanced by the member when no recovery is obtained on behalf of the client.

6157.3. Any advertisement made on behalf of a member, which is not paid for by the member, shall disclose any business relationship, past or present, between the member and the person paying for the advertisement.

6157.4. Any advertisement that is created or disseminated by a lawyer referral service shall disclose whether the attorneys on the organization's referral list, panel, or system, paid any consideration, other than a proportional share of actual cost, to be included on that list, panel, or system.

6157.5. The court shall report the name, address, and professional license number of any person found in violation of this article to the appropriate professional licensing agency for review and possible disciplinary action.

6157.6. A true and correct copy of any advertisement made by a person or member shall be retained for one year by the person or member who pays for an advertisement soliciting employment of legal services.

6157.7. (a) Nothing in this article shall be deemed to limit or preclude enforcement of any other provision of law, or of any court rule, or of the State Bar Rules of Professional Conduct.

(b) Nothing in this article shall limit the right of advertising protected under the Constitution of the State of California or of the United States. If any provision of this article is found to violate either Constitution, that provision is severable and the remaining provisions shall be enforceable without the severed provision.

CHAPTER 519

An act to add Sections 26810, 26827.6, and 26827.7 to the Government Code, and to amend Section 2586 of, and to add Part 15 (commencing with Section 700) to Division 2 of, the Probate Code, relating to documents.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 26810 is added to the Government Code, to read:

26810. (a) The clerk of the superior court may cause the following documents to be photographed, microphotographed, photocopied, electronically imaged, or otherwise reproduced on film and stored in that form:

(1) A document transferred to the clerk under Section 732 of the Probate Code.

(2) A will delivered to the clerk of the superior court under Section 8200 of the Probate Code if the clerk has held the will for at least 10 years.

(b) The photograph, microphotograph, photocopy, or electronic image shall be made in a manner that meets the minimum standards or guidelines recommended by the American National Standards Institute or the Association for Information and Image Management. All these photographs, microphotographs, photocopies, and electronic images shall be indexed, and shall be stored in a manner and place that reasonably assures their preservation indefinitely against loss, theft, defacement, or destruction.

(c) Before proof of death of the maker of a document or will referred to in subdivision (a), the photographs, microphotographs, photocopies, and electronic images shall be confidential, and shall be made available only to the maker. After proof of death of the maker of the document or will by a certified copy of the death certificate, the photographs, microphotographs, photocopies, and electronic images shall be public records.

(d) Section 26809 does not apply to a will or other document referred to in subdivision (a), or to the reproduction authorized by this section.

(e) Upon making the reproduction authorized by this section, the clerk of the superior court may destroy the original document.

SEC. 2. Section 26827.6 is added to the Government Code, to read:

26827.6. (a) The fee for receiving and storing a document transferred to the clerk of the superior court under Section 732 of the Probate Code is ten dollars ($10), unless the board of supervisors determines that ten dollars ($10) is less than the direct cost of making

a photograph, microphotograph, photocopy, or electronic image of the document, if any, and the direct cost of indexing and long-term storage of the document or its photograph, microphotograph, photocopy, or electronic image.

(b) If the board of supervisors makes the determination provided in subdivision (a), the board may set a fee for receiving and storing a document that exceeds ten dollars ($10), but that fee shall not exceed the direct costs specified in subdivision (a).

(c) The superior court may reduce or waive the fee established pursuant to this section under either of the following circumstances:

(1) The court has assumed jurisdiction under Article 11 (commencing with Section 6180) of Chapter 4 of Division 3 of the Business and Professions Code over the law practice of the attorney with whom the document is deposited.

(2) On a showing of hardship.

SEC. 3. Section 26827.7 is added to the Government Code, to read:

26827.7. The fee for searching a document transferred to the clerk of the superior court under Section 732 of the Probate Code is the same as the fee under Section 26854 for searching records or files.

SEC. 4. Part 15 (commencing with Section 700) is added to Division 2 of the Probate Code, to read:

PART 15. DEPOSIT OF ESTATE PLANNING DOCUMENTS WITH ATTORNEY

CHAPTER 1. DEFINITIONS

700. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

701. "Attorney" means an individual licensed to practice law in this state.

702. "Deposit" means delivery of a document by a depositor to an attorney for safekeeping or authorization by a depositor for an attorney to retain a document for safekeeping.

703. "Depositor" means a natural person who deposits the person's document with an attorney.

704. "Document" means any of the following:

(a) A signed original will, declaration of trust, trust amendment, or other document modifying a will or trust.

(b) A signed original power of attorney.

(c) A signed original nomination of conservator.

(d) Any other signed original instrument that the attorney and depositor agree in writing to make subject to this part.

CHAPTER 2. DUTIES AND LIABILITIES OF ATTORNEY

710. If a document is deposited with an attorney, the attorney, and a successor attorney that accepts transfer of the document, shall

use ordinary care for preservation of the document on and after July 1, 1994, whether or not consideration is given, and shall hold the document in a safe, vault, safe deposit box, or other secure place where it will be reasonably protected against loss or destruction.

711. If a document deposited with an attorney is lost or destroyed, the attorney shall give notice of the loss or destruction to the depositor by one of the following methods:

(a) By mailing the notice to the depositor's last known address.

(b) By the method most likely to give the depositor actual notice.

712. Notwithstanding failure of an attorney to satisfy the standard of care required by Section 710 or 716, the attorney is not liable for loss or destruction of the document if the depositor has actual notice of the loss or destruction and a reasonable opportunity to replace the document, and the attorney offers without charge either to assist the depositor in replacing the document, or to prepare a substantially similar document and assist in its execution.

713. The acceptance by an attorney of a document for deposit imposes no duty on the attorney to do either of the following:

(a) Inquire into the content, validity, invalidity, or completeness of the document, or the correctness of any information in the document.

(b) Provide continuing legal services to the depositor or to any beneficiary under the document. This subdivision does not affect the duty, if any, of the drafter of the document to provide continuing legal services to any person.

714. (a) If so provided in a written agreement signed by the depositor, an attorney may charge the depositor for compensation and expenses incurred in safekeeping or delivery of a document deposited with the attorney.

(b) No lien arises for the benefit of an attorney on a document deposited with the attorney, whether before or after its transfer, even if provided by agreement.

715. An attorney may give written notice to a depositor, and obtain written acknowledgment from the depositor, in the following form:

NOTICE AND ACKNOWLEDGMENT

To: _____

(Name of depositor)

_____

(Address)

_____

(City, state, and ZIP)

I have accepted your will or other estate planning document for safekeeping. I must use ordinary care for preservation of the document.

You must keep me advised of any change in your address shown

above. If you do not and I cannot return this document to you when necessary, I will no longer be required to use ordinary care for preservation of the document, and I may transfer it to another attorney, or I may transfer it to the clerk of the superior court of the county of your last known domicile, and give notice of the transfer to the State Bar of California.

_____

(Signature of attorney)

_____

(Address of attorney)

_____

(City, state, ZIP)

My address shown above is correct. I understand that I must keep you advised of any change in this address.

Dated: _____

_____

(Signature of depositor)

716. Notwithstanding Section 710, if an attorney has given written notice to the depositor, and has obtained written acknowledgment from the depositor, in substantially the form provided in Section 715, and the requirements of subdivision (a) of Section 732 are satisfied, the attorney, and a successor attorney that accepts transfer of a document, shall use at least slight care for preservation of a document deposited with the attorney.

CHAPTER 3. TERMINATION OF DEPOSIT

Article 1. Termination by Depositor

720. A depositor may terminate a deposit on demand, in which case the attorney shall deliver the document to the depositor.

Article 2. Termination by Attorney

730. An attorney with whom a document has been deposited, or to whom a document has been transferred pursuant to this article, may terminate the deposit only as provided in this article.

731. An attorney may terminate the deposit by one of the following methods:

(a) Personal delivery of the document to the depositor.

(b) Mailing the document to the depositor's last known address, by registered or certified mail with return receipt requested, and receiving a signed receipt.

(c) The method agreed on by the depositor and attorney.

732. (a) An attorney may terminate a deposit under this section

if the attorney has mailed notice to reclaim the document to the depositor's last known address and the depositor has failed to reclaim the document within 90 days after the mailing.

(b) Subject to subdivision (f), an attorney may terminate a deposit under this section by transferring the document to another attorney. All documents transferred under this subdivision shall be transferred to the same attorney.

(c) Subject to subdivision (f), if an attorney is deceased, lacks legal capacity, or is no longer an active member of the State Bar, a deposit may be terminated under this section by transferring the document to the clerk of the superior court of the county of the depositor's last known domicile. The attorney shall advise the clerk that the document is being transferred pursuant to Section 732.

(d) An attorney may not accept a fee or compensation from a transferee for transferring a document under this section. An attorney may charge a fee for receiving a document under this section.

(e) Transfer of a document by an attorney under this section is not a waiver or breach of any privilege or confidentiality associated with the document, and is not a violation of the rules of professional conduct. If the document is privileged under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, the document remains privileged after the transfer.

(f) If the document is a will and the attorney has actual notice that the depositor has died, the attorney may terminate a deposit only as provided in Section 734.

733. (a) An attorney transferring one or more documents under Section 732 shall mail notice of the transfer to the State Bar of California. The notice shall contain all of the following information:

(1) The name of the depositor.

(2) The date of the transfer.

(3) The name, address, and State Bar number of the transferring attorney.

(4) Whether any documents are transferred to an attorney, and the name, address, and State Bar number of the attorney to whom the documents are transferred.

(5) Whether any documents are transferred to a superior court clerk.

(b) The State Bar shall record only one notice of transfer for each transferring attorney. The State Bar shall prescribe the form for the notice of transfer. On request by any person, the State Bar shall give that person information in the notice of transfer. At its sole election, the State Bar may give the information orally or in writing.

734. (a) In cases not governed by subdivision (b) or (c), after the death of the depositor an attorney may terminate a deposit by personal delivery of the document to the depositor's personal representative.

(b) If the document is a will and the attorney has actual notice that the depositor has died but does not have actual notice that a

personal representative has been appointed for the depositor, an attorney may terminate a deposit only as provided in Section 8200.

(c) If the document is a trust, after the death of the depositor an attorney may terminate a deposit by personal delivery of the document either to the depositor's personal representative or to the trustee named in the document.

735. (a) If the attorney is deceased or lacks legal capacity, a deposit may be terminated as provided in this article by the attorney's law partner, by a shareholder of the attorney's law corporation, or by a lawyer or nonlawyer employee of the attorney's firm, partnership, or corporation.

(b) If the attorney lacks legal capacity and there is no person to act under subdivision (a), a deposit may be terminated by the conservator of the attorney's estate or by an attorney in fact acting under a durable power of attorney. A conservator of the attorney's estate may act without court approval.

(c) If the attorney is deceased and there is no person to act under subdivision (a), a deposit may be terminated by the attorney's personal representative.

(d) If a person authorized under this section terminates a deposit as provided in Section 732, the person shall give the notice required by Section 733.

SEC. 5. Section 2586 of the Probate Code is amended to read:

2586. (a) As used in this section, "estate plan of the conservatee" includes, but is not limited to, the conservatee's will, any trust of which the conservatee is the settlor or beneficiary, any power of appointment created by or exercisable by the conservatee, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee's death to another or others which the conservatee may have originated.

(b) Notwithstanding Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code (lawyer-client privilege), the court, in its discretion, may order that any person having possession of any document constituting all or part of the estate plan of the conservatee shall deliver the document to the court for examination by the court, and, in the discretion of the court, by the attorneys for the persons who have appeared in the proceedings under this article, in connection with the petition filed under this article.

(c) Unless the court otherwise orders, no person who examines any document produced pursuant to an order under this section shall disclose the contents of the document to any other person. If that disclosure is made, the court may adjudge the person making the disclosure to be in contempt of court.

(d) For good cause, the court may order that a document constituting all or part of the estate plan of the conservatee, whether or not produced pursuant to an order under this section, shall be delivered for safekeeping to the custodian designated by the court.

The court may impose those conditions it determines are appropriate for holding and safeguarding the document. The court may authorize the conservator to take any action a depositor may take under Part 15 (commencing with Section 700) of Division 2.

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

CHAPTER 520

An act to add Section 798.23 to the Civil Code relating to mobilehome parks.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 798.23 is added to the Civil Code, to read:

798.23. (a) The owner of the park, and any person employed by the park, shall be subject to, and comply with, all park rules and regulations, to the same extent as residents and their guests.

(b) This section shall not apply to either of the following:

(1) Any rule or regulation that governs the age of any resident or guest.

(2) Acts of a park owner or park employee which are undertaken to fulfill a park owner's maintenance and care responsibilities.

(c) This section shall not affect in any way, either to validate or invalidate, nor does this section express a legislative policy judgment in favor of or against, the enforcement of a park rule or regulation which prohibits or restricts the subletting of a mobilehome park space by a tenant.

CHAPTER 521

An act to amend Section 22708 of, and to add Article 12.5 (commencing with Section 7414.1) to Chapter 10 of Division 3 of, the Business and Professions Code, relating to tanning facilities.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Article 12.5 (commencing with Section 7414.1) is added to Chapter 10 of Division 3 of the Business and Professions Code, to read:

Article 12.5. Tanning Facilities

7414.1. All records required by law to be kept by tanning facilities subject to the Filante Tanning Facility Act of 1988 (Chapter 23 (commencing with Section 22700) of Division 8), including, but not limited to, records relating to written warning statements, the sign required to be posted, the qualifications of facility operators, statements of acknowledgment, parental consent forms, and injury reports, shall be open to inspection by the board, or its authorized representatives, during any inspection, or during any investigation initiated in response to a complaint that the tanning facility has violated any provision of the Filante Tanning Facility Act of 1988. A copy of any or all of those records shall be provided to the board, or its authorized representatives, immediately upon request.

7414.2. (a) Notwithstanding any other provision of law, a violation of the Filante Tanning Facility Act of 1988 (Chapter 23 (commencing with Section 22700) of Division 8), is an infraction subject to the procedures described in Sections 19.6 and 19.7 of the Penal Code when:

(1) A complaint or a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code is filed in court charging the offense as an infraction, or

(2) The court, with the consent of the defendant and the prosecution, determines that the offense is an infraction in which event the case shall proceed as if the defendant has been arraigned on an infraction complaint.

(b) Notwithstanding any other provision of law, a violation of any of the provisions of the Filante Tanning Facility Act of 1988, which is an infraction, is punishable by a fine of not less than two hundred fifty dollars ($250) and not more than one thousand dollars ($1,000).

(c) This section shall become effective July 1, 1994.

7414.3. (a) Any representative of the board designated by the director shall have the authority to issue a written notice to appear

in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. Representatives so designated are not peace officers and are not entitled to safety member retirement benefits, as a result of that designation. Except as otherwise provided, the representative's authority is limited to the issuance of written notices to appear for infraction violations of the Filante Tanning Facility Act of 1988 and only when the violation is committed in the presence of the representative.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any representative, acting pursuant to subdivision (a) and within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest which is lawful or which the representative, at the time of that arrest, had reasonable cause to believe was lawful.

(c) This section shall become effective July 1, 1994.

7414.4. The board, and its authorized representatives, may disseminate information to tanning facilities regarding compliance with the Filante Tanning Facility Act of 1988.

7414.5. This article shall be applicable only to those tanning facilities operated in conjunction with, or at the same location as, an establishment licensed under this chapter.

7414.6. The board may adopt regulations concerning the operation of tanning facilities in licensed establishments.

SEC. 2. Section 22708 of the Business and Professions Code is amended to read:

22708. (a) A first violation of this chapter is an infraction. Each day a first violation continues constitutes a separate infraction.

(b) Any violation of this chapter subsequent to a first violation is a misdemeanor. Each day a subsequent violation continues constitutes a separate misdemeanor.

SEC. 3. The State Board of Barbering and Cosmetology shall conduct a study and submit a report to the Legislature no later than July 1, 1994, which includes the following information:

(a) The total number of tanning facilities in the State of California.

(b) Whether tanning facilities are in substantial compliance with the Filante Tanning Facility Act of 1988.

(c) A recommendation as to whether further regulation of tanning facilities is required.

(d) If further regulation of tanning facilities is required, a recommendation as to what state agency should be granted such jurisdiction.

No appropriation is made for the required study and any costs for the study shall be absorbed by the Board of Barbering and Cosmetology.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty

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

CHAPTER 522

An act to add Section 2944.5 to the Civil Code, relating to insurance.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 2944.5 is added to the Civil Code, to read:

2944.5. No lender, mortgagee, or any third party having an interest in real or personal property shall refuse to accept a policy issued by an admitted insurer solely because the policy is issued for a continuous period without a fixed expiration date even though the policy premium is due and payable every six months, provided the lender, mortgagee, or third party is entitled to receive (a) notice of renewal from the insurer within 15 days of receipt of payment on the policy by the insured or (b) notice of cancellation or nonrenewal under the terms and conditions set forth in Sections 678 and 2074.8 of the Insurance Code, whichever is applicable.

CHAPTER 523

An act to amend Section 25355.7 of the Health and Safety Code, and to amend Section 13307 of the Water Code, relating to hazardous substances.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 25355.7 of the Health and Safety Code is amended to read:

25355.7. (a) The department and the State Water Resources Control Board shall concurrently establish policies and procedures consistent with this chapter that the department's representatives shall follow in overseeing and supervising the activities of responsible parties who are carrying out the investigation of, and taking removal or remedial actions at, hazardous substance release sites. The policies

and procedures shall be consistent with the policies and procedures established pursuant to Section 13307 of the Water Code, and shall include, but are not limited to, all of the following:

(1) The procedures the department will follow in making decisions as to when a potentially responsible party may be required to undertake an investigation to determine if a hazardous substance release has occurred.

(2) Policies for carrying out a phased, step-by-step investigation to determine the nature and extent of possible soil and groundwater contamination at a site.

(3) Procedures for identifying and utilizing the most cost-effective methods for detecting contamination and carrying out removal or remedial actions.

(4) Policies for determining reasonable schedules for investigation and removal or remedial action at a site. The policies shall recognize the dangers to public health and the environment posed by a release and the need to mitigate those dangers while at the same time taking into account, to the extent possible, the resources, both financial and technical, available to a responsible party.

(b) The department and the State Water Resources Control Board shall jointly review the policies and procedures that were established pursuant to this section and Section 13307 of the Water Code prior to the enactment of this subdivision and shall concurrently revise policies and procedures as necessary to make them as consistent as possible, by selecting from those inconsistent procedures or policies, those policies or procedures which are the most protective of the environment. Where they cannot be made consistent because of the differing requirements of this chapter and Division 7 (commencing with Section 13000) of the Water Code, the department and the State Water Resources Control Board shall, by July 1, 1994, jointly develop, and send to the Legislature, recommendations for revising this chapter and Division 7 (commencing with Section 13000) of the Water Code in order to make consistent the hazardous substance release cleanup policies and procedures followed by the department, the State Water Resources Control Board, and the California regional waste quality control boards.

SEC. 2. Section 13307 of the Water Code is amended to read:

13307. (a) The state board and the Department of Toxic Substances Control shall concurrently establish policies and procedures consistent with this division that the state board's representatives and the representatives of regional boards shall follow in overseeing and supervising the activities of persons who are carrying out the investigation of, and cleaning up or abating the effects of, a discharge of a hazardous substance which creates, or threatens to create, a condition of contamination, pollution, or nuisance. The policies and procedures shall be consistent with the policies and procedures established pursuant to Section 25355.7 of the

Health and Safety Code and shall include, but are not limited to, all of the following:

(1) The procedures the state board and the regional boards will follow in making decisions as to when a person may be required to undertake an investigation to determine if an unauthorized hazardous substance discharge has occurred.

(2) Policies for carrying out a phased, step-by-step investigation to determine the nature and extent of possible soil and groundwater contamination or pollution at a site.

(3) Procedures for identifying and utilizing the most cost-effective methods for detecting contamination or pollution and cleaning up or abating the effects of contamination or pollution.

(4) Policies for determining reasonable schedules for investigation and cleanup, abatement, or other remedial action at a site. The policies shall recognize the dangers to public health and the waters of the state posed by an unauthorized discharge and the need to mitigate those dangers while at the same time taking into account, to the extent possible, the resources, both financial and technical, available to the person responsible for the discharge.

(b) The state board and the Department of Toxic Substances Control shall jointly review the policies and procedures that were established pursuant to this section and Section 25355.7 of the Health and Safety Code prior to the enactment of this subdivision and shall concurrently revise those policies and procedures as necessary to make them as consistent as possible. Where they cannot be made consistent because of the differing requirements of this chapter and Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, the state board and the Department of Toxic Substances Control shall, by July 1, 1994, jointly develop, and send to the Legislature, recommendations for revising this chapter and Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code in order to make consistent the hazardous substance release cleanup policies and procedures followed by the state board, the Department of Toxic Substances Control, and the regional boards.

CHAPTER 524

An act to repeal and add Sections 1305 and 1305.1 of, and to add Section 1305.3 to, the Penal Code, and to amend Sections 40512 and 40512.5 of the Vehicle Code, relating to bail.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 1305 of the Penal Code is repealed.

SEC. 2. Section 1305 is added to the Penal Code, to read:

1305. (a) A court shall declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for any of the following:

(1) Arraignment.

(2) Trial.

(3) Judgment.

(4) Any other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required.

(5) To surrender himself or herself in execution of the judgment after appeal.

However, the court shall not have jurisdiction to declare a forfeiture and the bail shall be released of all obligations under the bond if the case is dismissed or if no complaint is filed within 15 days from the date of arraignment.

(b) If the amount of the bond or money or property deposited exceeds four hundred dollars ($400), the clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety or the depositor of money posted instead of bail. At the same time, the court shall mail a copy of the forfeiture notice to the bail agent whose name appears on the bond. The clerk shall also execute a certificate of mailing of the forfeiture notice and shall place the certificate in the court's file. If the notice of forfeiture is required to be mailed pursuant to this section, the 180-day period provided for in this section shall be extended by a period of five days to allow for the mailing.

If the surety is an authorized corporate surety, and if the bond plainly displays the mailing address of the corporate surety and the bail agent, then notice of the forfeiture shall be mailed to the surety at that address and to the bail agent, and mailing alone to the surety or the bail agent shall not constitute compliance with this section.

The surety or depositor shall be released of all obligations under the bond if any of the following conditions apply:

(1) The clerk fails to mail the notice of forfeiture in accordance with this section within 30 days after the entry of the forfeiture.

(2) The clerk fails to mail the notice of forfeiture to the surety at the address printed on the bond.

(3) The clerk fails to mail a copy of the notice of forfeiture to the bail agent.

(c) If the defendant appears in court within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if the notice is required under subdivision (b), the court shall, on its own motion, direct the order of forfeiture to be vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of

pretrial release.

Additionally, if the defendant is surrendered to custody or to the court by the bail within the 180-day period, the court shall, on its own motion, direct the order of forfeiture to be vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

In all other cases, an order vacating the forfeiture shall not be made without 10 days' prior notice by the bail to the applicable prosecuting agency, unless notice is waived by the agency. The notice may be given by the surety insurer, the bail agent, the surety, or the depositor of money or property, any of whom may appear in person or through an attorney. A motion filed in a timely manner within the 180-day period may be heard within 30 days of the expiration of the 180-day period. The court may extend the 30-day period upon a showing of good cause.

In lieu of exonerating the bond, the court may order the bail reinstated and the defendant released on the same bond if both of the following conditions are met:

(1) The bail is given prior notice of the reinstatement.

(2) The bail has not surrendered the defendant.

(d) In the case of a permanent disability, the court shall direct the order of forfeiture to be vacated and the bail or money or property deposited as bail exonerated if, within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if notice is required under subdivision (b), it is made apparent to the satisfaction of the court that both of the following conditions are met:

(1) The defendant is deceased or otherwise permanently unable to appear in the court due to illness, insanity, or detention by military or civil authorities.

(2) The absence of the defendant is without the connivance of the bail.

(e) In the case of a temporary disability, the court shall order the tolling of the 180-day period provided in this section during the period of temporary disability, provided that it appears to the satisfaction of the court that the following conditions are met:

(1) The defendant is temporarily disabled by reason of illness, insanity, or detention by military or civil authorities.

(2) Based upon the temporary disability, the defendant is unable to appear in court during the remainder of the 180-day period.

(3) The absence of the defendant is without the connivance of the bail.

The period of the tolling shall be extended for a reasonable period of time, at the discretion of the court, after the cessation of the disability to allow for the return of the defendant to the jurisdiction of the court.

(f) In all cases where a defendant is in custody beyond the jurisdiction of the court that ordered the bail forfeited, and the

prosecuting agency elects not to extradite the defendant, the court shall vacate the forfeiture and exonerate the bond on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

SEC. 3. Section 1305.1 of the Penal Code is repealed.

SEC. 4. Section 1305.1 is added to the Penal Code, to read:

1305.1. If the defendant fails to appear for arraignment, trial, judgment, or upon any other occasion when his or her appearance is lawfully required, but the court has reason to believe that sufficient excuse may exist for the failure to appear, the court may continue the case for a period it deems reasonable to enable the defendant to appear without ordering a forfeiture of bail or issuing a bench warrant.

If, after the court has made the order, the defendant, without sufficient excuse, fails to appear on or before the continuance date set by the court, the bail shall be forfeited and a warrant for the defendant's arrest may be ordered issued.

SEC. 5. Section 1305.3 is added to the Penal Code, to read:

1305.3. The applicable prosecuting agency shall recover, out of the forfeited bail money, the costs incurred in successfully opposing a motion to vacate the forfeiture prior to the division of the forfeited bail money between the cities and counties in accordance with Section 1463.

SEC. 6. Section 40512 of the Vehicle Code is amended to read:

40512. (a) (1) Except as specified in paragraph (2), if at the time the case is called for arraignment before the magistrate the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited and may, in his or her discretion, order that no further proceedings be had in the case, unless the defendant has been charged with a violation of Section 23111 or 23112, or subdivision (a) of Section 23113, and he or she has been previously convicted of the same offense, except if the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings shall be had in the case.

(2) If the defendant has posted surety bail and the magistrate has ordered the bail forfeited and that no further proceedings shall be had in the case, the bail retains the right to obtain relief from the forfeiture as provided in Section 1305 of the Penal Code if the amount of the bond, money, or property deposited exceeds seven hundred dollars ($700).

(b) Upon the making of the order that no further proceedings shall be had, all sums deposited as bail shall forthwith be paid into the city or county treasury, as the case may be.

(c) If a guaranteed traffic arrest bail bond certificate has been filed, the clerk of the court shall bill the issuer for the amount of bail fixed by the uniform countywide schedule of bail required under subdivisions (b) and (d) of Section 1296 of the Penal Code.

(d) Upon presentation by a court of the bill for a fine or bail assessed against an individual covered by a guaranteed traffic arrest bail bond certificate, the issuer shall pay to the court the amount of the fine or forfeited bail which is within the maximum amount guaranteed by the terms of the certificate.

(e) The court shall return the guaranteed traffic arrest bail bond certificate to the issuer upon receipt of payment in accordance with subdivision (d).

SEC. 7. Section 40512.5 of the Vehicle Code is amended to read:

40512.5. (a) Except as specified in subdivision (b), if at the time the case is called for trial the defendant does not appear, either in person or by counsel, and has not requested in writing that the trial proceed in his or her absence, the court may declare the bail forfeited and may, in its discretion, order that no further proceedings be had in the case, or the court may act pursuant to Section 1043 of the Penal Code. However, if the defendant has been charged with a violation of Section 23111 or 23112, or subdivision (a) of Section 23113, and he or she has been previously convicted of a violation of the same section, the court may declare the bail forfeited, but shall issue a bench warrant for the arrest of the person charged, except if the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings shall be had in the case.

(b) If the defendant has posted surety bail and the magistrate has ordered the bail forfeited and that no further proceedings shall be had in the case, the bail retains the right to obtain relief from the forfeiture as provided in Section 1305 of the Penal Code if the amount of the bond, money, or property deposited exceeds seven hundred dollars ($700).

CHAPTER 525

An act to add Section 1808.6 to the Vehicle Code, relating to records.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 1808.6 is added to the Vehicle Code, to read:

1808.6. (a) In addition to those specified in Section 1808.4, the home address of any of the following persons, that appears in any record of the department, is confidential, if the person requests the confidentiality of that information:

(1) The chairman, executive officer, commissioners, and deputy commissioners of the Board of Prison Terms.

(2) The deputy director, chief administrative hearing officer, associate chief deputy commissioners, and deputy commissioners of the Parole Hearings Division of the Department of Corrections.

(3) The chairperson, members, executive director, and hearing representatives of the Youthful Offender Parole Board.

(4) The spouse or children of persons listed in this section, regardless of the spouse's or child's place of residence.

(b) The confidential home address of any of the persons listed in subdivision (a) shall not be disclosed to any person, except a court, a law enforcement agency, the State Board of Equalization, or any governmental agency to which, under any provision of law, information is required to be furnished from records maintained by the department.

(c) Any record of the department containing a confidential home address shall be open to public inspection, as provided in Section 1808, if the address is completely obliterated or otherwise removed from the record. The home address shall be withheld from public inspection for three years following termination of office or employment, except with respect to retired peace officers, whose home addresses shall be withheld from public inspection permanently upon request of confidentiality at the time the information would otherwise be opened. The department shall inform any person who requests a confidential home address what agency employs the individual whose address was requested.

CHAPTER 526

An act to amend Sections 1569.17 and 1569.191 of the Health and Safety Code, relating to residential care facilities for the elderly.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 1569.17 of the Health and Safety Code is amended to read:

1569.17. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with clients of residential care facilities for the elderly may pose a risk to the clients' health and safety.

(a) Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation. If it is found that the applicant or any other person specified in subdivision (b) has been convicted of a

crime, other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of that fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (e). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a client, residing in the facility.

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential facility for the elderly, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than 20 calendar days following employment, residence, or initial presence in the residential care facility for the elderly.

These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing.

Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the

Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee in writing within 15 calendar days of the receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (e). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly; or (2) seek an exemption pursuant to subdivision (e). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered by the department.

(d) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to the provisions of Sections 1203.4 and 1203.4a of the Penal Code permitting a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction.

(e) After review of the record, the director may grant an exemption from disqualification for a license pursuant to subdivision

(a), or for employment, residence, or presence in a residential care facility for the elderly as specified in subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, or paragraph (1) of Section 273a or Section 273d, or Section 288 or 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director shall notify in writing the licensee or the applicant of his or her decision within 60 days of receipt of all information from the applicant and other sources determined necessary by the director for the rendering of a decision pursuant to this subdivision.

(f) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

(g) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1569.58, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

SEC. 2. Section 1569.191 of the Health and Safety Code is amended to read:

1569.191. (a) Notwithstanding Section 1569.19, in the event of a sale of a licensed facility where the sale will result in a new license being issued, the sale and transfer of property and business shall be subject to both of the following:

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

(2) The licensee shall, prior to entering into an admission agreement, inform all residents, or their legal representatives, admitted to the facility after notification to the department, of the licensee's intent to sell the property or business.

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

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

(2) The prospective buyer shall submit an application for a license, as specified in Section 1569.15, within five days of the acceptance of the offer by the seller.

(c) No sale of the facility shall be permitted until 30 days have elapsed from the date upon which notice has been provided pursuant to paragraphs (1) and (2) of subdivision (a).

(d) The department shall give priority to applications for licensure that are submitted pursuant to this section in order to ensure timely transfer of the property and business. The department shall make a decision within 60 days after a complete application is submitted on whether to issue a license pursuant to Section 1569.15.

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

(f) Facilities that are subject to Chapter 10 (commencing with Section 1770) of Division 2, including Section 1789.4, shall not be subject to paragraph (1) of subdivision (a), and subdivisions (c) and (d).

CHAPTER 527

An act to amend Section 2883 of the Civil Code, to amend Section 996.470 of the Code of Civil Procedure, and to amend Sections 5023 and 10811 of the Probate Code, relating to civil proceedings.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 2883 of the Civil Code is amended to read:

2883. (a) An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In that case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest.

(b) For purposes of subdivision (a), an agreement by a beneficiary of an estate that is subject to administration, as provided in Division 7 (commencing with Section 7000) of the Probate Code, to create a lien upon real property in the estate that is undistributed at the time the agreement is entered into, shall create no lien upon

the real property unless and until the real property is distributed to that beneficiary. Upon recordation of an order confirming the sale of the real property pursuant to Section 10313 of the Probate Code and the recording of a duly executed deed in accordance therewith, any expectancy of a lien in the real property under the agreement shall be extinguished.

SEC. 2. Section 996.470 of the Code of Civil Procedure is amended to read:

996.470. (a) Notwithstanding any other statute other than Section 996.480, the aggregate liability of a surety to all persons for all breaches of the condition of a bond is limited to the amount of the bond. Except as otherwise provided by statute, the liability of the principal is not limited to the amount of the bond.

(b) If a bond is given in an amount greater than the amount required by statute or by order of the court or officer pursuant to statute, the liability of the surety on the bond is limited to the amount required by statute or by order of the court or officer, unless the amount of the bond has been increased voluntarily or by agreement of the parties to satisfy an objection to the bond made in an action or proceeding.

(c) The liability of a surety is limited to the amount stipulated in any of the following circumstances:

(1) The bond contains a stipulation pursuant to Section 995.520 that the liability of a personal surety is limited to the worth of the surety.

(2) The bond contains a stipulation that the liability of a surety is an amount less than the amount of the bond pursuant to a statute that provides that the liability of sureties in the aggregate need not exceed the amount of the bond.

SEC. 3. Section 5023 of the Probate Code is amended to read:

5023. (a) As used in this section "modification" means revocation of a provision for a nonprobate transfer on death in whole or part, designation of a different beneficiary, or election of a different benefit or payment option. As used in this section, "modification" does not mean, and this section does not apply to, the exercise of a power of appointment under a trust.

(b) If a married person executes a provision for a nonprobate transfer of community property on death with the written consent of the person's spouse and thereafter executes a modification of the provision for transfer of the property without written consent of the spouse, the modification is effective as to the person's interest in the community property and has the following effect on the spouse's interest in the community property:

(1) If the person executes the modification during the spouse's lifetime, the modification revokes the spouse's previous written consent to the provision for transfer of the property.

(2) If the person executes the modification after the spouse's death, the modification does not affect the spouse's previous written consent to the provision for transfer of the property, and the spouse's

interest in the community property is subject to the nonprobate transfer on death as consented to by the spouse.

(3) If a written expression of intent of a party in the provision for transfer of the property or in the written consent to the provision for transfer of the property authorizes the person to execute a modification after the spouse's death, the spouse's interest in the community property is deemed transferred to the married person on the spouse's death, and the modification is effective as to both the person's and the spouse's interests in the community property.

SEC. 4. Section 10811 of the Probate Code is amended to read:

10811. (a) Subject to the provisions of this part, in addition to the compensation provided by Section 10810, the court may allow additional compensation for extraordinary services by the attorney for the personal representative in an amount the court determines is just and reasonable.

(b) Extraordinary services by the attorney for which the court may allow compensation include services by a paralegal performing the extraordinary services under the direction and supervision of an attorney. The petition for compensation shall set forth the hours spent and services performed by the paralegal.

(c) An attorney for the personal representative may agree to perform extraordinary service on a contingent fee basis subject to the following conditions:

(1) The agreement is written and complies with all the requirements of Section 6147 of the Business and Professions Code.

(2) The agreement is approved by the court following a hearing noticed as provided in Section 10812.

(3) The court determines that the compensation provided in the agreement is just and reasonable and the agreement is to the advantage of the estate and in the best interests of the persons who are interested in the estate.

CHAPTER 528

An act to amend Section 3065 of, and to add Section 3065.1 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 3065 of the Vehicle Code is amended to read:

3065. (a) Every franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of repair and

servicing and shall file a copy of its warranty reimbursement schedule or formula with the board. The warranty reimbursement schedule or formula shall be reasonable with respect to the time and compensation allowed the franchisee for the warranty work and all other conditions of the obligation. The reasonableness of the warranty reimbursement schedule or formula shall be determined by the board if a franchisee files a notice of protest with the board.

(b) In determining the adequacy and fairness of the compensation, the franchisee's effective labor rate charged to its various retail customers may be considered together with other relevant criteria.

(c) If any franchisor disallows a franchisee's claim for a defective part, alleging that the part, in fact, is not defective, the franchisor shall return the part alleged not to be defective to the franchisee at the expense of the franchisor, or the franchisee shall be reimbursed for the franchisee's cost of the part, at the franchisor's option.

(d) All claims made by franchisees pursuant to this section shall be either approved or disapproved within 30 days after their receipt by the franchisor. Any claim not specifically disapproved in writing within 30 days from receipt by the franchisor shall be deemed approved on the 30th day. When any claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and each notice shall state the specific grounds upon which the disapproval is based. All claims made by franchisees under this section and Section 3064 for labor and parts shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, shall not constitute a violation of this article.

(e) Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis, and for a period of 12 months after a claim is paid or credit issued. Franchisee claims for warranty compensation shall not be disapproved except for good cause, such as performance of nonwarranty repairs, lack of material documentation, or fraud. Any chargeback to a franchisee for warranty parts or service compensation shall be made within 90 days of the completion of the audit. If a false claim was submitted by a franchisee with intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board.

SEC. 2. Section 3065.1 is added to the Vehicle Code, to read:

3065.1. (a) All claims made by a franchisee for payment under the terms of a franchisor incentive program shall be either approved or disapproved within 30 days after receipt by the franchisor. When any claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and each notice shall state the specific grounds upon which the disapproval is based. Any claim not specifically disapproved in writing within 30 days from receipt shall be deemed approved on the

30th day. Following the disapproval of a claim, a franchisee shall have one year from receipt of the notice of disapproval in which to appeal the disapproval to the franchisor and file a protest with the board. All claims made by franchisees under this section shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of this article.

(b) Audits of franchisee incentive records may be conducted by the franchisor on a reasonable basis, and for a period of 18 months after a claim is paid or credit issued. Franchisee claims for incentive program compensation shall not be disapproved except for good cause, such as ineligibility under the terms of the incentive program, lack of material documentation, or fraud. Any chargeback to a franchisee for incentive program compensation shall be made within 90 days of the completion of the audit. If a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board.

CHAPTER 529

An act to amend Sections 1207 and 6406 of, to add a chapter heading immediately preceding Section 6400 of, to add Chapter 2 (commencing with Section 6450) to Part 2 of Division 6 of, and to repeal Section 6408 of, the Probate Code, relating to intestate succession.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 1207 of the Probate Code is amended to read:

1207. (a) Subject to subdivision (b), where notice is required to be given to a decedent's beneficiaries, devisees, or heirs, notice need not be given to a person who, because of a possible parent-child relationship between a stepchild and a stepparent or between a foster child and a foster parent, may be (1) an heir of the decedent or (2) a member of a class to which a devise is made.

(b) Subdivision (a) does not apply where the person required to give the notice has actual knowledge of facts that a person would reasonably believe give rise under Section 6454 to the parent-child relationship between the stepchild and the stepparent or between the foster child and the foster parent.

SEC. 2. A chapter heading is added immediately preceding Section 6400 of the Probate Code, to read:

CHAPTER 1. INTESTATE SUCCESSION GENERALLY

SEC. 3. Section 6406 of the Probate Code is amended to read:

6406. Except as provided in Section 6451, relatives of the halfblood inherit the same share they would inherit if they were of the whole blood.

SEC. 4. Section 6408 of the Probate Code is repealed.

SEC. 5. Chapter 2 (commencing with Section 6450) is added to Part 2 of Division 6 of the Probate Code, to read:

CHAPTER 2. PARENT AND CHILD RELATIONSHIP

6450. Subject to the provisions of this chapter, a relationship of parent and child exists for the purpose of determining intestate succession by, through, or from a person in the following circumstances:

(a) The relationship of parent and child exists between a person and the person's natural parents, regardless of the marital status of the natural parents.

(b) The relationship of parent and child exists between an adopted person and the person's adopting parent or parents.

6451. (a) An adoption severs the relationship of parent and child between an adopted person and a natural parent of the adopted person unless both of the following requirements are satisfied:

(1) The natural parent and the adopted person lived together at any time as parent and child, or the natural parent was married to or cohabiting with the other natural parent at the time the person was conceived and died before the person's birth.

(2) The adoption was by the spouse of either of the natural parents or after the death of either of the natural parents.

(b) Neither a natural parent nor a relative of a natural parent, except for a wholeblood brother or sister of the adopted person or the issue of that brother or sister, inherits from or through the adopted person on the basis of a parent and child relationship between the adopted person and the natural parent that satisfies the requirements of paragraphs (1) and (2) of subdivision (a), unless the adoption is by the spouse or surviving spouse of that parent.

(c) For the purpose of this section, a prior adoptive parent and child relationship is treated as a natural parent and child relationship.

6452. If a child is born out of wedlock, neither a natural parent nor a relative of that parent, except for a brother or sister of the child or the issue of that brother or sister, inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied:

(a) The parent or a relative of the parent acknowledged the child.

(b) The parent or a relative of the parent contributed to the support or the care of the child.

6453. For the purpose of determining whether a person is a

"natural parent" as that term is used in this chapter:

(a) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code.

(b) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless any of the following conditions exist:

(1) A court order was entered during the father's lifetime declaring paternity.

(2) Paternity is established by clear and convincing evidence that the father has openly held out the child as his own.

(3) It was impossible for the father to hold out the child as his own and paternity is established by clear and convincing evidence.

6454. For the purpose of determining intestate succession by a person or the person's issue from or through a foster parent or stepparent, the relationship of parent and child exists between that person and the person's foster parent or stepparent if both of the following requirements are satisfied:

(a) The relationship began during the person's minority and continued throughout the joint lifetimes of the person and the person's foster parent or stepparent.

(b) It is established by clear and convincing evidence that the foster parent or stepparent would have adopted the person but for a legal barrier.

6455. Nothing in this chapter affects or limits application of the judicial doctrine of equitable adoption for the benefit of the child or the child's issue.

CHAPTER 530

An act to repeal and add Section 18100.5 of the Probate Code, relating to probate.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 18100.5 of the Probate Code is repealed.

SEC. 2. Section 18100.5 is added to the Probate Code, to read:

18100.5. (a) The trustee may present a certification of trust to any person in lieu of providing a copy of the trust instrument to establish the existence or terms of the trust. A certification of trust may be executed by the trustee voluntarily or at the request of the person with whom the trustee is dealing.

(b) The certification of trust may confirm the following facts or contain the following information:

(1) The existence of the trust and date of execution of the trust instrument.

(2) The identity of the settlor or settlors and the currently acting trustee or trustees of the trust.

(3) The powers of the trustee.

(4) The revocability or irrevocability of the trust and the identity of any person holding any power to revoke the trust.

(5) When there are multiple trustees, the signature authority of the trustees, indicating whether all or less than all of the currently acting trustees are required to sign in order to exercise various powers of the trustee.

(6) The trust identification number, whether a social security number or an employer identification number.

(7) The manner in which title to trust assets should be taken.

(c) The certification shall contain a statement that the trust has not been revoked, modified, or amended in any manner which would cause the representations contained in the certification of trust to be incorrect and shall contain a statement that it is being signed by all of the currently acting trustees of the trust. The certification shall be in the form of an acknowledged declaration signed by all currently acting trustees of the trust.

(d) The certification of trust shall not be required to contain the dispositive provisions of the trust which set forth the distribution of the trust estate.

(e) A person may require that the trustee offering the certification of trust provide copies of those excerpts from the original trust documents and amendments thereto which designate the trustee and confer upon the trustee the power to act in the pending transaction. Nothing in this section is intended to require or imply an obligation to provide the dispositive provisions of the trust or the entire trust and amendments thereto.

(f) A person who acts in reliance upon a certification of trust without actual knowledge that the representations contained therein are incorrect is not liable to any person for so acting. A person who does not have actual knowledge that the facts contained in the certification of trust are incorrect may assume without inquiry the existence of the facts contained in the certification of trust. Actual knowledge shall not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the trust certification. Any transaction, and any lien created thereby, entered into by the trustee and a person acting in reliance upon a certification of trust shall be enforceable against the trust assets. However, if the person has actual knowledge that the trustee is acting outside the scope of the trust, then the transaction is not enforceable against the trust assets. Nothing contained herein shall limit the rights of the beneficiaries of the trust against the trustee.

(g) A person's failure to demand a certification of trust does not

affect the protection provided that person by Section 18100, and no inference as to whether that person has acted in good faith may be drawn from the failure to demand a certification of trust. Nothing in this section is intended to create an implication that a person is liable for acting in reliance upon a certification of trust under circumstances where the requirements of this section are not satisfied.

(h) Except when requested by a beneficiary or in the context of litigation concerning a trust and subject to the provisions of subdivision (e), any person making a demand for the trust documents in addition to a certification of trust to prove facts set forth in the certification of trust acceptable to the third party shall be liable for damages, including attorney's fees, incurred as a result of the refusal to accept the certification of trust in lieu of the requested documents if the court determines that the person acted in bad faith in requesting the trust documents.

CHAPTER 531

An act to add Chapter 4.7 (commencing with Section 2190) to Division 3 of the Streets and Highways Code, relating to highways.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Chapter 4.7 (commencing with Section 2190) is added to Division 3 of the Streets and Highways Code, to read:

CHAPTER 4.7. INTERMODAL CORRIDORS OF ECONOMIC SIGNIFICANCE

2190. This chapter shall be known and may be cited as the Intermodal Corridor of Economic Significance Act.

2191. The department shall, in cooperation with regional transportation planning agencies, identify the significant transportation arteries in the state that connect or provide access to major sea or waterway ports, nationwide railway systems, airports, and interstate and intrastate highway systems, thereby serving as an intermodal corridor of economic significance. The identified corridors shall include, at a minimum, at least one corridor that serves two or more major seaports.

CHAPTER 532

An act to amend Sections 22901, 22904, 22906, and 22922 of the Business and Professions Code, relating to equipment dealers.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 22901 of the Business and Professions Code is amended to read:

22901. As used in this chapter:

(a) "Equipment" means machines designed for or adapted and used for agriculture, livestock, grazing, light industrial, and utility, as those terms are customarily used in the industry. It does not include earthmoving and heavy construction equipment, mining equipment, or forestry equipment as those terms are customarily used in the industry, nor does it include all-terrain vehicles as defined in Section 111 of the Vehicle Code.

(b) "Equipment dealer" or "equipment dealership" means any person, partnership, corporation, association, or other form of business enterprise, primarily engaged in the retail sale of equipment as defined in subdivision (a).

(c) "Supplier" means a person, partnership, corporation, association, or other business enterprise engaged in the manufacturing, assembly, or wholesale distribution of equipment. The term shall also include any successor in interest, including a purchaser of assets or stock, or a surviving corporation resulting from a merger, liquidation, or reorganization of the original supplier.

(d) "Dealer agreement" means an oral or written contract or agreement of definite or indefinite duration, between a supplier and an equipment dealer, which provides for the rights and obligations of the parties with respect to the purchase or sale of equipment.

(e) "Net cost" means the price the equipment dealer paid to the supplier for the equipment, less all applicable discounts allowed, plus the freight costs from the supplier's location to the equipment dealer's location.

(f) "Net price" means the price listed for repair parts in the supplier's price list or catalog, less all applicable discounts.

SEC. 2. Section 22904 of the Business and Professions Code is amended to read:

22904. Every supplier shall provide to its equipment dealers, on an annual basis, an opportunity to return a portion of their surplus parts inventory for credit. The surplus procedure shall be administered as follows:

(a) The supplier may notify its equipment dealers of a time period, of at least 90 days' duration, during which time equipment dealers may submit their surplus parts list and return their surplus

parts to the supplier. The designated period to return parts may be staggered during the year for each equipment dealer at the supplier's option.

(b) If a supplier has not notified an equipment dealer of a specific time period for returning surplus parts within the preceding 12 months, then it shall authorize and allow the equipment dealer's surplus parts return request within 60 days after receipt of such request from the equipment dealer.

(c) Pursuant to the provisions of this section, a supplier must allow surplus parts return authority on a dollar value of parts equal to 10 percent of the total dollar value of parts purchased by the equipment dealer from the supplier during the 12-month period immediately preceding the notification to the equipment dealer by the supplier of the surplus parts return program, or the month the equipment dealer's return request is made, whichever is applicable. The equipment dealer may elect to return a dollar value of the equipment dealer's surplus parts equal to less than 10 percent of the total dollar value of parts purchased by the equipment dealer from the supplier during the preceding 12-month period, as provided in this section.

(d) No obsolete or superseded part may be returned, but any part listed in the supplier's current returnable parts list or any superseded part that has not been the subject of the supplier's parts return program at the date of notification to the equipment dealer by the supplier of the surplus parts return program, or the date of the equipment dealer's parts return request, whichever is applicable, shall be eligible for return and the credit specified. However, returned parts shall be in new and unused condition and shall have been purchased by the equipment dealer from the supplier to whom they are returned, unless no program for the return of such part has been offered by the supplier.

(e) The minimum lawful credit to be allowed for returned parts shall be 95 percent of the net price, as listed in the supplier's current returnable parts list at the date of the notification to the equipment dealer by the supplier of the surplus parts return program, or the date of the equipment dealer's parts return request, whichever is applicable.

(f) Applicable credit, pursuant to this section, must be issued or furnished to the equipment dealer within 90 days after receipt of the equipment dealer's returned parts by the supplier.

(g) The provisions of this section shall be supplemental to any agreement between the equipment dealer and the supplier covering the return of repair parts. This section does not prevent a supplier from charging back to the dealer's account amounts previously paid or credited as a discount incident to the dealer's purchase of goods. Any repurchase, pursuant to this section, shall not be subject to the provisions of the bulk sales law.

(h) The annual parts return provided for in this section may be waived by a dealer.

SEC. 3. Section 22906 of the Business and Professions Code is amended to read:

22906. (a) An equipment dealer, as defined in subdivision (b) of Section 22901, is not entitled to establish a lien pursuant to this chapter, unless that person has first sent to the lien debtor a written notice, by certified mail, which states all of the following:

(1) The payment of the reasonable or agreed charges is more than 90 days overdue. This requirement does not apply to equipment subject to repurchase that was returned to the supplier subsequent to return of other equipment also subject to repurchase for which payment is overdue.

(2) The amount of reasonable or agreed charges that are overdue.

(3) The lien debtor has the following three alternatives:

(A) Allow the lien to be filed.

(B) Enter into a consensual security interest in the proceeds, pursuant to the Commercial Code.

(C) Pay the reasonable or agreed charges that are overdue.

(4) The lien debtor has 10 days from receipt of the notice to select an alternative, notify the lien claimant of the alternative selected, and satisfy all of the requirements of the selected alternative. This part of the notice to the lien debtor shall be in 10-point type or bolder.

(5) The lien claimant may file the notice of claim of lien pursuant to this chapter at any time thereafter if the lien debtor does not comply with the requirements of this section.

(b) An equipment dealer who has complied with subdivision (a), has a lien for payment of the repurchase amount payable under subdivision (b) of Section 22905 and for the costs of enforcing the lien.

(c) The lien established pursuant to this chapter attaches to the proceeds of any sale of the equipment returned for repurchase.

(d) The amount of charges secured by the lien shall not exceed an amount equal to the reasonable or agreed charges for the equipment as set forth in Section 22905.

SEC. 3. Section 22922 of the Business and Professions Code is amended to read:

22922. (a) Except to the extent specifically set forth in this chapter, the lien created by this chapter is subject to Division 9 (commencing with Section 9101) of the Commercial Code.

(b) For the purposes of this chapter, as used in Division 9 (commencing with Section 9101) of the Commercial Code, the following terms have the following meanings:

(1) "Secured party" refers to the equipment dealer, lien creditor, lien claimant, or assignee thereof under this chapter.

(2) "Debtor" refers to the supplier, lien debtor, or debtor under this chapter.

(3) "Collateral" refers to the equipment subject to the lien created under this chapter.

(c) A security agreement is not necessary to make an equipment

repurchase lien created under this chapter enforceable.

(d) An equipment repurchase lien created under this chapter shall not continue in the repurchased equipment following the disposition thereof.

(e) The right of an equipment dealer to enforce the lien created under this chapter shall be governed by this chapter and shall not be governed by Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code.

CHAPTER 533

An act to amend Section 7262 of the Government Code, relating to relocation assistance.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 7262 of the Government Code is amended to read:

7262. (a) Whenever a program or project to be undertaken by a public entity will result in the displacement of any person, the displaced person is entitled to payment for actual moving and related expenses as the public entity determines to be reasonable and necessary, including expenses for all of the following:

(1) Actual and reasonable expenses in moving himself or herself, his or her family, business, or farm operation, or his or her, or his or her family's, personal property.

(2) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate the property, as determined by the public entity.

(3) Actual and reasonable expenses in searching for a replacement business or farm, not to exceed one thousand dollars ($1,000).

(4) Actual and reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed ten thousand dollars ($10,000).

(b) Any displaced person eligible for payments under subdivision (a) who is displaced from a dwelling and who elects to accept the payments authorized by this subdivision in lieu of the payments authorized by subdivision (a) shall receive a moving expense and dislocation allowance which shall be determined according to a schedule established by the head of the lead agency. The schedule shall be consistent with the Residential Moving Expense and Dislocation Allowance Payment Schedule established by Part 24 of

Title 49 of the Code of Federal Regulations.

(c) Any displaced person who moves or discontinues his or her business or farm operation and elects to accept the payment authorized by this subdivision in lieu of the payment authorized by subdivision (a), shall receive a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, except that the payment shall not be less than one thousand dollars ($1,000) nor more than twenty thousand dollars ($20,000). In the case of a business, no payment shall be made under this subdivision, unless the public entity is satisfied that the business cannot be relocated without substantial loss of patronage and is not part of a commercial enterprise having at least one other establishment not being acquired, engaged in the same or similar business. For purposes of this subdivision, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation before federal, state, and local income taxes during the two taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property being acquired, or during any other period as the public entity determines to be more equitable for establishing earnings, and includes any compensation paid by the business or farm operation to the owner, his or her spouse, or his or her dependents during the two-year or other period. To be eligible for the payment authorized by this subdivision, the business or farm operation shall make available its state income tax records, financial statements, and accounting records, for confidential use pursuant to an audit to determine the payment pursuant to this subdivision. In regard to an outdoor advertising display, payment pursuant to this subdivision shall be limited to the amount necessary to physically move, or replace that display. Any displaced person eligible for payments under subdivision (a) who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the public entity, may elect to accept a fixed payment in lieu of the payment authorized by subdivision (a). The fixed payment shall not be less than one thousand dollars ($1,000) nor more than twenty thousand dollars ($20,000). A person whose sole business at the displacement dwelling is the rental of the property to others shall not qualify for a payment under this subdivision.

(d) Whenever the acquisition of real property used for a business or farm operation causes the person conducting the business or farm operation to move from other real property, or to move his or her personal property from other real property, the person shall receive payments for moving and related expenses under subdivision (a) or (b) and relocation advisory assistance under Section 7261 for moving from the other property.

(e) Whenever a public entity must pay the cost of moving a displaced person under paragraph (1) of subdivision (a), or subdivision (d):

(1) The costs of the move shall be exempt from regulation by the

Public Utilities Commission.

(2) The public entity may solicit competitive bids from qualified bidders for performance of the work. Bids submitted in response to the solicitations shall be exempt from regulation by the Public Utilities Commission.

(f) No provision of this chapter shall be construed to require a public entity to provide any relocation assistance to a lessee if the property acquired for a program or project is subject to a lease for purposes of conducting farm operations and the public entity agrees to assume all of the terms of that lease.

CHAPTER 534

An act to amend Sections 11754 and 11755 of the Health and Safety Code, relating to alcohol and drug programs.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 11754 of the Health and Safety Code is amended to read:

11754. (a) The department shall be the single state agency authorized to receive any federal funds payable directly to the state by the Substance Abuse and Mental Health Services Administration to implement programs that provide services to alleviate the problems related to the inappropriate use of alcoholic beverages.

(b) The department shall be the single state agency authorized to receive any federal funds payable directly to the state by the Substance Abuse and Mental Health Services Administration to implement programs that provide services to alleviate the problems related to the use of other drugs.

(c) The department may receive other federal funds and expend them pursuant to this division, the Budget Act, or other statutes.

SEC. 2. Section 11755 of the Health and Safety Code is amended to read:

11755. The department shall do all of the following:

(a) Adopt regulations pursuant to Section 11152 of the Government Code.

(b) Employ administrative, technical, and other personnel as may be necessary for the performance of its powers and duties.

(c) Do or perform any of the acts that may be necessary, desirable, or proper to carry out the purpose of this part.

(d) Provide funds to counties for the planning and implementation of local programs to alleviate problems related to inappropriate alcohol and drug use.

(e) Review and approve or disapprove county alcohol program

plans and county drug program plans submitted for state and federal funds allocated by the department.

(f) Provide for technical assistance and training to local alcohol and drug programs to assist in the planning and implementation of quality services. The department may charge a fee to cover the cost of providing technical assistance to alcohol and drug programs.

(g) Review research in, and serve as a resource to provide information relating to, alcohol and drug programs.

(h) In cooperation with the Department of Personnel Administration, encourage training in other state agencies to assist the agencies to recognize employee problems relating to inappropriate alcohol use or drug use that affect job performance and encourage the employees to seek appropriate services.

(i) Assist and cooperate with the Office of Statewide Health Planning and Development and the California Health Policy and Data Advisory Commission in the drafting and adoption of the state health plan to assure inclusion of appropriate provisions relating to alcohol problems and drug problems.

(j) In the same manner and subject to the same conditions as other state agencies, develop and submit annually to the Department of Finance a program budget for the state-funded alcohol program and the state-funded drug program which shall include expenditures proposed to be made under this division, and may include expenditures proposed to be made by any other state agency relating to alcohol or drug problems, pursuant to an interagency agreement with the department.

(k) Review and certify alcohol programs meeting state standards pursuant to Chapter 7 (commencing with Section 11830), and review and certify drug abuse treatment programs pursuant to Section 11994.

(*l*) Develop standards for assuring minimal statewide levels of service quality provided by alcohol and drug service programs.

(m) Review and license methadone treatment programs.

(n) Develop and implement, in partnership with the counties, alcohol and drug prevention strategies especially designed for youth.

(o) Develop and maintain a centralized alcohol and drug abuse indicator data collection system which shall gather and obtain information on the status of the alcohol and drug abuse problem in the State of California. This information shall include, but not be limited to, all of the following:

(1) The number and characteristics of persons receiving recovery or treatment services from alcohol and drug programs providing publicly funded services or services licensed by the department.

(2) The location and types of services offered by these programs.

(3) The number of admissions to hospitals on both an emergency room and inpatient basis for alcohol- and drug-related treatment.

(4) The number of arrests for alcohol and drug violations.

(5) The number of Department of the Youth Authority commitments for drug violations.

(6) The number of Department of Corrections commitments for drug violations.

(7) The number or percentage of persons having alcohol or drug problems as determined by survey information.

(8) The amounts of illicit drugs confiscated by law enforcement in the state.

(9) The statewide alcohol and drug treatment program distribution and the fiscal impact of alcohol and drug problems upon the state.

Providers of publicly funded services or services licensed by the department to clients-participants shall report data in a manner, format, and under a schedule prescribed by the department.

(p) Issue a report annually, which portrays the drugs abused, populations affected, user characteristics, crime-related costs, socioeconomic costs, and other related information deemed necessary in providing a problem profile of alcohol and drug abuse in the state.

(q) (1) Require any individual, public or private organization, or government agency, receiving federal grant funds, to comply with all federal statutes, regulations, guidelines, and terms and conditions of the grants. The failure of the individual, public or private organization, or government agency, to comply with the statutes, regulations, guidelines, and terms and conditions of the grants may result in the department's disallowing noncompliant costs, or the suspension or termination of the contract or grant award allocating the grant funds.

(2) Adopt regulations implementing this subdivision as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, the adoption of the regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Subsequent amendments to the initial adoption of emergency regulations shall be deemed an emergency as described in this paragraph only if those amendments are adopted in direct response to a change in federal statutes, regulations, guidelines, or the terms and conditions of federal grants. Nothing in this paragraph shall be interpreted as prohibiting the department from adopting subsequent amendments on a nonemergency basis or as emergency regulations in accordance with the standards set forth in Section 11346.1 of the Government Code.

CHAPTER 535

An act to amend Section 11713.1 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 11713.1 of the Vehicle Code is amended to read:

11713.1. It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) Advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(b) Advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except taxes, vehicle registration fees, certificate of compliance or noncompliance fees not exceeding thirty-five dollars ($35) pursuant to any statute, finance charges, and any dealer document preparation charge. The dealer document preparation charge shall not exceed thirty-five dollars ($35).

(c) Exclude from the newspaper display advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, and any dealer document preparation charge.

For purposes of this subdivision, "newspaper display advertisement" means any advertisement in a newspaper which is two or more newspaper columns in width or one newspaper column in width and more than seven inches in length.

(d) Represent the dealer document preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) Fail to sell a vehicle to any person at the advertised total price, exclusive of taxes, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer document preparation charge, which charges shall not exceed thirty-five dollars ($35) for the document preparation charge and thirty-five dollars ($35) for the certificate of compliance or noncompliance pursuant to any statute, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(f) Advertise for sale as new any new vehicle of a line-make for which the dealer does not hold a franchise.

This subdivision does not apply to any transaction involving a mobilehome, a recreational vehicle as defined in Section 18010 of the Health and Safety Code, a commercial coach as defined in Section 18001.8 of the Health and Safety Code, an off-highway motor vehicle subject to identification as defined in Section 38012, or a commercial vehicle.

(g) Sell a park trailer, as specified in subdivision (b) of Section 18010 of the Health and Safety Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) Advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term "free" includes merchandise or services offered for sale at a price less than the seller's cost of the merchandise or services.

(i) Advertise vehicles, and related goods or services, at a specified dealer price, with the intent not to supply reasonably expectable demand, unless the advertisement discloses the number of vehicles in stock at the advertised price. In addition, whether or not there are sufficient vehicles in stock to supply a reasonably expectable demand, when phrases such as "starting at," "from," "beginning as low as," or words of similar import are used in reference to an advertised price, the advertisement shall disclose the number of vehicles available at that advertised price.

For purposes of this subdivision, in any newspaper advertisement for a vehicle that is two model years old or newer, the actual phrase that states the number of vehicles in stock at the advertised price shall be (1) printed in a type size that is at least equal to one-quarter of the type size, and in the same style and color of type, used for the advertised price, however, in no case shall the phrase be printed in less than 8-point type size, and (2) be disclosed immediately above, below, or beside the advertised price without any intervening words, pictures, marks, or symbols.

The disclosure required by this subdivision is in addition to any other disclosure required by this code or any regulation regarding identifying vehicles advertised for sale.

(j) Use the term "rebate" or similar words such as "cash back" in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, "cash price" has the meaning as defined in subdivision

(e) of Section 2981 of the Civil Code.

(*l*) Advertise a guaranteed trade-in allowance unless the guarantee is provided by the manufacturer or distributor.

(m) Misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) (1) Advertise that the selling price of a vehicle is above, below, or at either of the following:

(A) The manufacturer's or distributor's invoice price to a dealer.

(B) A dealer's cost.

(2) This subdivision does not apply to either of the following:

(A) Any communication occurring during face-to-face negotiations for the purchase of a specific vehicle.

(B) Any communication between a dealer and a prospective commercial purchaser that is not disseminated to the general public. For purposes of this subparagraph, a "commercial purchaser" means a dealer, lessor, lessor-retailer, manufacturer, remanufacturer, distributor, financial institution, governmental entity, or person who purchases 10 or more vehicles during a year.

(o) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is "fully factory equipped."

(q) Affix on any new vehicle a supplemental price sticker containing a price that represents the dealer's asking price which exceeds the manufacturer's suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer's name, that the supplemental sticker price is the dealer's asking price, or words of similar import, and that it is not the manufacturer's suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item which is not included in the manufacturer's suggested retail price, and discloses the additional price of each item. If the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and describe it as "added mark-up."

(r) Advertise any underselling claim, such as "we have the lowest prices" or "we will beat any dealer's price," unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than any other licensee in its trade area and maintains

records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) Advertise any incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

For purposes of this subdivision, "incentive" means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

(t) Display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(u) Fail to disclose in writing to the franchisor of a new motor vehicle dealer the name of the purchaser, date of sale, and the vehicle identification number of each new motor vehicle sold of the line-make of that franchisor, or intentionally submit to that franchisor a false name for the purchaser or false date for the date of sale.

(v) Enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.

(w) Use a simulated check, as defined in subdivision (a) of Section 22433 of the Business and Professions Code, in an advertisement for the sale or lease of a vehicle.

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

CHAPTER 536

An act to amend Section 632.7 of the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 632.7 of the Penal Code is amended to read:

632.7. (a) Every person who, without the consent of all parties to a communication, intercepts or receives and intentionally records, or assists in the interception or reception and intentional recordation of, a communication transmitted between two cellular radio telephones, a cellular radio telephone and a landline telephone, two cordless telephones, a cordless telephone and a landline telephone, or a cordless telephone and a cellular radio telephone, shall be punished by a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has been convicted previously of a violation of this section or of Section 631, 632, 632.5, 632.6, or 636, the person shall be punished by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

(b) This section shall not apply to any of the following:

(1) Any public utility engaged in the business of providing communications services and facilities, or to the officers, employees, or agents thereof, where the acts otherwise prohibited are for the purpose of construction, maintenance, conduct, or operation of the services and facilities of the public utility.

(2) The use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of the public utility.

(3) Any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(c) As used in this section, each of the following terms have the following meaning:

(1) "Cellular radio telephone" means a wireless telephone authorized by the Federal Communications Commission to operate in the frequency bandwidth reserved for cellular radio telephones.

(2) "Cordless telephone" means a two-way, low power communication system consisting of two parts, a "base" unit which connects to the public switched telephone network and a handset or "remote" unit, that are connected by a radio link and authorized by the Federal Communications Commission to operate in the frequency bandwidths reserved for cordless telephones.

(3) "Communication" includes, but is not limited to, communications transmitted by voice, data, or image, including facsimile.

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

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

In order to prevent confusion that could hamper law enforcement efforts, and to clarify the intent of the Legislature when enacting Chapter 298 of the Statutes of 1992, it is necessary that this act take effect immediately.

CHAPTER 537

An act to add Sections 1522.03, 1569.172, and 1596.8713 to the Health and Safety Code, and to add Article 6 (commencing with Section 15660) to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to care facilities.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 1522.03 is added to the Health and Safety Code, to read:

1522.03. It is the intent of the Legislature that the Department of Justice charge a fee sufficient to cover its cost in providing services in accordance with Section 1522 to comply with the 30 calendar day requirement for provision to the department of the criminal record information, as contained in subdivision (c) of Section 1522.

SEC. 2. Section 1569.172 is added to the Health and Safety Code, to read:

1569.172. It is the intent of the Legislature that the Department of Justice charge a fee sufficient to cover its cost in providing services in accordance with Section 1569.17 to comply with the 30 calendar day requirement for provision to the department of the criminal record information, as contained in subdivision (c) of Section

1569.17.

SEC. 3. Section 1596.8713 is added to the Health and Safety Code, to read:

1596.8713. It is the intent of the Legislature that the Department of Justice charge a fee sufficient to cover its costs in providing services in accordance with Section 1596.871 to comply with the 30 calendar day requirement for provision to the department of the criminal record information, as contained in subdivision (c) of Section 1569.871.

SEC. 4. Article 6 (commencing with Section 15660) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 6. Criminal Record Reporting

15660. (a) The Department of Justice shall secure any criminal record of a person to determine whether the person has been convicted within the last 10 years of a sex offense against a minor, a violation of Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368, of the Penal Code, theft, robbery, burglary, or any felony, if both of the following conditions are met:

(1) An employer of the person requests the determination and submits fingerprints of the person to the Department of Justice.

(2) The person is unlicensed and provides nonmedical domestic or personal care to an aged or disabled adult in the adult's own home.

(b) If it is found that the person has been convicted within the last 10 years of a sex offense against a minor, a violation of Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368, of the Penal Code, theft, robbery, burglary, or any felony, the Department of Justice shall notify the employer of that fact. If no criminal record information has been recorded, the Department of Justice shall provide the employer with a statement of that fact.

(c) Fingerprints shall be on a card provided by the Department of Justice for the purpose of obtaining a set of fingerprints. The employer shall submit the fingerprints to the Department of Justice. Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the employer of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the employer with a statement of that fact as soon as possible, but not later than 30 calender days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, as soon as possible, but not later than 30 calendar days from the date of receipt of the fingerprints, notify the employer that the fingerprints were illegible.

(d) The Department of Justice shall charge a fee to the employer to cover the costs of administering this section.

(e) It is the intent of the Legislature that the Department of Justice charge a fee to cover its cost in providing services in

accordance with this section to comply with the 30 calendar day requirement for provision to the department of the criminal record information, as contained in subdivision (c).

CHAPTER 538

An act to amend Section 2881 of the Public Utilities Code, relating to telephones.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 2881 of the Public Utilities Code is amended to read:

2881. (a) The commission shall design and implement a program whereby each telephone corporation shall provide a telecommunications device capable of servicing the needs of individuals who are deaf or hearing impaired, together with a single party line, at no charge additional to the basic exchange rate, to any subscriber who is certified as an individual who is deaf or hearing impaired by a licensed physician, audiologist, or a qualified state agency and to any subscriber which is an organization representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e).

(b) The commission shall also design and implement a program whereby each telephone corporation shall provide a dual-party relay system, using third-party intervention to connect individuals who are deaf or hearing impaired and offices of organizations representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e), with persons of normal hearing by way of intercommunications devices for individuals who are deaf or hearing impaired and the telephone system, making available reasonable access of all phases of public telephone service to telephone subscribers who are deaf or hearing impaired. In order to make a dual-party relay system which will meet the requirements of individuals who are deaf or hearing impaired available at a reasonable cost, the commission shall initiate an investigation, conduct public hearings to determine the most cost-effective method of providing dual-party relay service to the deaf or hearing impaired when using a telecommunications device, and solicit the advice, counsel, and physical assistance of statewide nonprofit consumer organizations of the deaf, during the development and implementation of the system. The commission shall phase in this program, on a geographical basis, over a three-year period ending on January 1, 1987. The commission shall apply for certification of this program under rules adopted by the Federal

Communications Commission pursuant to Section 401 of the Americans with Disabilities Act of 1990 (Public Law 101-336).

(c) The commission shall also design and implement a program whereby specialized or supplemental telephone communications equipment may be provided to subscribers who are certified to be disabled at no charge additional to the basic exchange rate. The certification, including a statement of medical need for specialized telephone communications equipment, shall be provided by a licensed physician and surgeon acting within the scope of his or her license or by a qualified state agency, as determined by the commission. The commission shall, in this connection, study the feasibility of, and implement if determined to be feasible, personal income criteria, in addition to the medical certification of disability, for determining a subscriber's eligibility under this subdivision.

(d) The commission shall establish a rate recovery mechanism through a surcharge not to exceed one-half of 1 percent uniformly applied to a subscriber's intrastate telephone service, other than one-way radio paging service and universal telephone service, both within a service area and between service areas, to allow telephone corporations to recover costs as they are incurred under this section. The surcharge shall be in effect until January 1, 1995. The commission shall require that the programs implemented under this section be identified on subscribers' bills, and shall establish a fund and require separate accounting for each of the programs implemented under this section.

(e) The commission shall determine and specify those statewide organizations representing the deaf or hearing impaired which shall receive a telecommunications device pursuant to subdivision (a) or a dual-party relay system pursuant to subdivision (b), or both, and in which offices the equipment shall be installed in the case of an organization having more than one office. The commission shall direct the telephone corporations subject to its jurisdiction to comply with its determinations and specifications in this regard.

(f) The commission shall annually review the surcharge level and the balances in the funds established pursuant to subdivision (d). Until January 1, 1995, the commission shall be authorized to make, within the limits set by subdivision (d), any necessary adjustments to the surcharge to ensure that the programs supported thereby are adequately funded and that the fund balances are not excessive. A fund balance which is projected to exceed six months' worth of projected expenses at the end of the fiscal year is excessive.

(g) The commission shall prepare and submit to the Legislature, on or before December 31, 1988, and annually thereafter, a report on the fiscal status of the programs established and funded pursuant to this section and Sections 2881.1 and 2881.2. The report shall include a statement of the surcharge level established pursuant to subdivision (d) and revenues produced by the surcharge, an accounting of program expenses, and an evaluation of options for controlling those expenses and increasing program efficiency,

including, but not limited to, all of the following proposals:

(1) The establishment of a means test for persons to qualify for program equipment or free or reduced charges for the use of telecommunication services.

(2) If and to the extent not prohibited under Section 401 of the Americans with Disabilities Act of 1990 (Public Law 101-336), the imposition of limits or other restrictions on maximum usage levels for the relay service, which shall include the development of a program to provide basic communications requirements to all relay users at discounted rates, including discounted toll call rates, and, for usage in excess of those basic requirements, at rates which recover the full costs of service.

(3) More efficient means for obtaining and distributing equipment to qualified subscribers.

(4) The establishment of quality standards for increasing the efficiency of the relay system.

CHAPTER 539

An act to amend, repeal, and add Section 1701.5 of the Business and Professions Code, relating to dentistry, and making an appropriation therefor.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 1701.5 of the Business and Professions Code is amended to read:

1701.5. (a) Any association or partnership or corporation or group of three or more dentists, engaging in practice under any name that would otherwise be in violation of Section 1701 may practice under such name if, and only if, the association, partnership, corporation or group of three or more holds an outstanding, unexpired, unsuspended, and unrevoked permit issued by the board under this section. On and after July 1, 1995, any individual dentist or pair of dentists engaging in the practice of dentistry under any name that would otherwise be in violation of Section 1701 may practice under that name if, and only if, the dentist or pair of dentists hold an outstanding, unexpired, unsuspended, and unrevoked permit issued by the board under this section. The board shall issue written permits authorizing the holder to use a name specified in the permit in connection with the holder's practice if, and only if, the board finds to its satisfaction that:

(1) The applicant or applicants are duly licensed dentists.

(2) The place or establishment, or the portion thereof, where the applicant or applicants practice, is owned or leased by the applicant

or applicants, and the practice conducted at the place or establishment, or portion thereof, is wholly owned and entirely controlled by the applicant or applicants.

(3) The name under which the applicant or applicants propose to operate contains at least one of the following designations: "dental group," "dental practice," or "dental office" and contains the family name of one or more of the past, present, or prospective associates, partners, shareholders, or members of the group.

(4) All licensed persons practicing at the location designated in the application hold valid and outstanding licenses and that no charges of unprofessional conduct are pending against any persons practicing at that location.

Permits issued under this section by the board shall expire and become invalid unless renewed at the times and in the manner provided for the renewal of certificates issued under this chapter.

Any permits issued under this section may be revoked or suspended at any time that the board finds that any one of the requirements for original issuance of a permit is no longer being fulfilled by the holder to whom the permit was issued. Proceedings for revocation or suspension shall be governed by the Administrative Procedure Act.

In the event charges of unprofessional conduct are filed against the holder of a permit issued under this section, or a member of an association or partnership or a member of a group or corporation to whom a permit has been issued under this section, proceedings shall not be commenced for revocation or suspension of the permit until final determination of the charges of unprofessional conduct and unless the charges have resulted in revocation or suspension of license.

(b) This section shall remain in effect only until January 1, 1999, and shall have no force or effect on or after that date, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 2. Section 1701.5 is added to the Business and Professions Code, to read:

1701.5. Any association or partnership or corporation or group of three or more dentists, engaging in practice under any name that would otherwise be in violation of Section 1701 may practice under this name if, and only if, the association, partnership, corporation or group holds an outstanding, unexpired, unsuspended, and unrevoked permit issued by the board under this section. The board shall issue written permits authorizing the holder to use a name specified in the permit in connection with the holder's practice if, and only if, the board finds to its satisfaction that:

(a) The applicant or applicants are duly licensed dentists.

(b) The place or establishment, or the portion thereof, where the applicant or applicants practice, is owned or leased by the applicant or applicants, and the practice conducted at the place or establishment, or portion thereof, is wholly owned and entirely

controlled by the applicant or applicants.

(c) The name that the applicant or applicants propose to operate contains at least one of the following designations: "dental group," "dental practice," or "dental office" and contains the family name of one or more of the past, present, or prospective associates, partners, shareholders, or members of the group.

(d) All licensed persons practicing at the location designated in the application hold valid and outstanding licenses and that no charges of unprofessional conduct are pending against any persons practicing at that location.

Permits issued under this section by the board shall expire and become invalid unless renewed at the times and in the manner provided for the renewal of certificates issued under this chapter.

Any permits issued under this section may be revoked or suspended at any time that the board finds that any one of the requirements for original issuance of a permit is no longer being fulfilled by the holder to whom the permit was issued. Proceedings for revocation or suspension shall be governed by the Administrative Procedure Act.

In the event charges of unprofessional conduct are filed against the holder of a permit issued under this section, or a member of an association or partnership or a member of a group or corporation to whom a permit has been issued under this section, proceedings shall not be commenced for revocation or suspension of the permit until final determination of the charges of unprofessional conduct and unless the charges have resulted in revocation or suspension of license.

(e) This section shall become operative on January 1, 1999.

CHAPTER 540

An act to amend Sections 22651.5 and 26701 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 22651.5 of the Vehicle Code is amended to read:

22651.5. (a) Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may, upon the complaint of any person, remove a vehicle parked within 500 feet of any occupied building of a school, community college, or university during normal hours of operation, or a vehicle parked within a residence or business district, from a highway or from public or private property, if an alarm device or horn has been

activated within the vehicle, the peace officer is unable to locate the owner of the vehicle within 45 minutes from the time of arrival at the vehicle's location, and the alarm device or horn has not been silenced prior to removal.

(b) Upon removal of a vehicle from a highway or from public or private property pursuant to this section, the peace officer ordering the removal shall immediately report the removal and the location to which the vehicle is removed to the Stolen Vehicle System of the Department of Justice.

SEC. 2. Section 26701 of the Vehicle Code is amended to read:

26701. (a) No person shall sell, offer for sale, or operate any motor vehicle, except a motorcycle, manufactured after January 1, 1936, unless it is equipped with safety glazing material wherever glazing materials are used in interior partitions, doors, windows, windshields, auxiliary wind deflectors or openings in the roof.

(b) No person shall sell or offer for sale any camper manufactured after January 1, 1968, nor shall any person operate a motor vehicle registered in this state which is equipped with that camper, unless the camper is equipped with safety glazing materials wherever glazing materials are used in outside windows and doors, interior partitions, and openings in the roof.

(c) No person shall operate a motorcycle manufactured after January 1, 1969, equipped with a windshield containing glazing material unless it is safety glazing material.

(d) No person shall sell, offer for sale, or operate any motor vehicle equipped with red, blue, or amber translucent aftermarket material in any partitions, windows, windshields, or wind deflectors.

(e) No person shall sell, offer for sale, or operate any trailer coach manufactured after January 1, 1977, that is capable of being towed with a fifth-wheel device unless the trailer coach is equipped with safety glazing materials wherever glazing materials are used in windows or doors, interior partitions, and openings in the roof.

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

CHAPTER 541

An act to amend Sections 10153.2, 10153.4, and 10170.5 of the Business and Professions Code, relating to real estate.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 10153.2 of the Business and Professions Code is amended to read:

10153.2. (a) An applicant to take the examination for an original real estate broker license shall also submit evidence, satisfactory to the commissioner, of successful completion, at an accredited institution, of:

(1) A three-semester unit course, or the quarter equivalent thereof, in each of the following:

(A) Real estate practice.

(B) Legal aspects of real estate.

(C) Real estate appraisal.

(D) Real estate financing.

(E) Real estate economics or accounting.

(2) A three-semester unit course, or the quarter equivalent thereof, in any of the following:

(A) Advanced legal aspects of real estate.

(B) Advanced real estate finance.

(C) Advanced real estate appraisal.

(D) Business law.

(E) Escrows.

(F) Real estate principles.

(G) Property management.

(H) Real estate office administration.

(I) Mortgage loan brokering and lending.

(3) On and after January 1, 1986, an applicant shall submit evidence of successful completion of each of the courses listed in paragraph (1) and any three of the courses listed in paragraph (2).

(b) The commissioner shall waive the requirements of this section for an applicant who is a member of the State Bar of California and shall waive the requirements for which an applicant has successfully completed an equivalent course of study as determined under Section 10153.5.

(c) The commissioner shall extend credit under this section for any course completed to satisfy requirements of Section 10153.3 or 10153.4.

SEC. 2. Section 10153.4 of the Business and Professions Code is amended to read:

10153.4. (a) Every person who is required to comply with Section 10153.3 to obtain an original real estate salesperson license

shall, prior to the issuance of the license, or within 18 months after issuance, submit evidence, satisfactory to the commissioner, of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance, or advanced real estate appraisal.

(b) A salesperson who qualifies for a license pursuant to this section shall not be required for the first license renewal thereafter to complete the continuing education pursuant to Article 2.5 (commencing with Section 10170), except for the courses specified in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 10170.5.

(c) The salesperson license issued to an applicant who has satisfied only the requirements of Section 10153.3 at the time of issuance shall be automatically suspended effective 18 months after issuance if the licensee has failed to satisfy subdivision (a). The suspension shall not be lifted until the suspended licensee has submitted the required evidence of course completion and the commissioner has given written notice to the licensee of the lifting of the suspension.

(d) The original license issued to a salesperson shall clearly set forth the conditions of the license and shall be accompanied by a notice of the provisions of this section and of any regulations adopted by the commissioner to implement this section.

(e) The commissioner shall waive the requirements of this section for any person who presents evidence of admission to the State Bar of California, and the commissioner shall waive the requirement for any course for which an applicant has completed an equivalent course of study as determined under Section 10153.5.

SEC. 3. Section 10170.5 of the Business and Professions Code is amended to read:

10170.5. (a) Except as otherwise provided in Sections 10153.4 and 10170.8, upon the initial renewal of all real estate licenses after December 31, 1995, no real estate license shall be renewed unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including all of the following:

(1) A three-hour course in ethics, professional conduct, and legal aspects of real estate, which shall include, but not be limited to, relevant legislation, regulations, articles, reports, studies, court decisions, treatises, and information of current interest.

(2) A three-hour course in agency relationships and duties in a real estate brokerage practice, including instruction in the disclosures to be made and the confidences to be kept in the various agency relationships between licensees and the parties to real estate transactions.

(3) A three-hour course in trust fund accounting and handling.

(4) A three-hour course in fair housing.

(5) Not less than 18 clock hours of courses or programs related to

consumer protection, and designated by the commissioner as satisfying this purpose in his or her approval of the offering of these courses or programs, which shall include, but not be limited to, forms of real estate financing relevant to serving consumers in the marketplace; land use regulation and control; pertinent consumer disclosures; agency relationships; capital formation for real estate development; fair practices in real estate; appraisal and valuation techniques; landlord-tenant relationships; energy conservation; environmental regulation and consideration; taxation as it relates to consumer decisions in real estate transactions; probate and similar disposition of real property; governmental programs such as revenue bond activities, redevelopment, and related programs; business opportunities; and mineral, oil, and gas conveyancing.

(6) Other courses and programs which will enable a licensee to achieve a high level of competence in serving the objectives of consumers who may engage the services of licensees to secure the transfer, financing, or similar objectives with respect to real property, including organizational and management techniques which will significantly contribute to this goal.

(b) For all subsequent renewals after the initial renewal, no real estate license shall be renewed unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including either one of the following:

(1) A four-hour update survey course that covers the subject areas specified in paragraphs (1) to (4), inclusive, of subdivision (a).

(2) Any two of the four three-hour courses described in paragraphs (1) to (4), inclusive, of subdivision (a), provided that the two courses completed have not been used to qualify for renewal under this subdivision in the four-year period immediately preceding the applicant's current four-year renewal period, other than the initial renewal in which all four courses shall have been completed.

(c) Any denial of a license pursuant to this section shall be subject to Section 10100.

CHAPTER 542

An act to amend Section 871.5 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 871.5 of the Penal Code is amended to read:

871.5. (a) When an action is dismissed by a magistrate pursuant to Section 859b, 861, 871, 1008, 1381, 1381.5, 1385, 1387, or 1389 of this code or Section 41403 of the Vehicle Code, or a portion thereof is dismissed pursuant to those same sections which may not be charged by information under Section 739, the prosecutor may make a motion in the superior court within 15 days to compel the magistrate to reinstate the complaint or a portion thereof and to reinstate the custodial status of the defendant under the same terms and conditions as when the defendant last appeared before the magistrate.

(b) Notice of the motion shall be made to the defendant and the magistrate. The only ground for the motion shall be that, as a matter of law, the magistrate erroneously dismissed the action or a portion thereof.

(c) The superior court shall hear and determine the motion on the basis of the record of the proceedings before the magistrate. If the motion is litigated to decision by the prosecutor, the prosecution is prohibited from refiling the dismissed action, or portion thereof.

(d) Within 10 days after the magistrate has dismissed the action or a portion thereof, the prosecuting attorney may file a written request for a transcript of the proceedings with the clerk of the magistrate. The reporter shall immediately transcribe his or her shorthand notes pursuant to Section 869 and file with the clerk of the superior court an original plus one copy, and as many copies as there are defendants (other than a fictitious defendant). The reporter shall be entitled to compensation in accordance with Section 869. The clerk of the superior court shall deliver a copy of the transcript to the prosecuting attorney immediately upon its receipt and shall deliver a copy of the transcript to each defendant (other than a fictitious defendant) upon his or her demand without cost.

(e) When a court has ordered the resumption of proceedings before the magistrate, the magistrate shall resume the proceedings and when so ordered, issue an order of commitment for the reinstated offense or offenses within 10 days after the superior court has entered an order to that effect or within 10 days after the remittitur is filed in the superior court. Upon receipt of the remittitur, the superior court shall forward a copy to the magistrate.

(f) Pursuant to paragraph (9) of subdivision (a) of Section 1238

the people may take an appeal from the denial of the motion by the superior court to reinstate the complaint or a portion thereof. If the motion to reinstate the complaint is granted, the defendant may seek review thereof only pursuant to Sections 995 and 999a. That review may only be sought in the event the defendant is held to answer pursuant to Section 872.

(g) Nothing contained herein shall preclude a magistrate, upon the resumption of proceedings, from considering a motion made pursuant to Section 1318.

If the superior court grants the motion for reinstatement and orders the magistrate to issue an order of commitment, the defendant, in lieu of resumed proceedings before the magistrate, may elect to waive his or her right to be committed by a magistrate, and consent to the filing of an amended or initial information containing the reinstated charge or charges. After arraignment thereon, he or she may adopt as a motion pursuant to Section 995, the record and proceedings of the motion taken pursuant to this section and the order issued pursuant thereto, and may seek review of the order in the manner prescribed in Section 999a.

CHAPTER 543

An act to amend Sections 161, 190, 1101.1, 1109, 1201, 1300, 15611, 15636, 15642, 15678.1, 15678.2, 15678.4, 15678.5, 15678.6, 15678.7, 15678.8, and 15681 of, and to add Sections 161.5, 165.5, 167.5, 171.05, 171.5, 190.5, and 1113 to, the Corporations Code, and to amend Sections 12202 and 12214 of the Government Code, relating to corporations.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 161 of the Corporations Code is amended to read:

161. "Constituent corporation" means a corporation which is merged with one or more other corporations or one or more limited partnerships and includes the surviving corporation.

SEC. 2. Section 161.5 is added to the Corporations Code, to read:

161.5. "Constituent limited partnership" means a limited partnership which is merged with one or more corporations and includes the surviving limited partnership.

SEC. 3. Section 165.5 is added to the Corporations Code, to read:

165.5. "Disappearing limited partnership" means a constituent limited partnership which is not the surviving limited partnership.

SEC. 4. Section 167.5 is added to the Corporations Code, to read:

167.5. "Domestic limited partnership" means a limited

partnership formed under the laws of this state.

SEC. 5. Section 171.05 is added to the Corporations Code, to read:

171.05. "Foreign limited partnership" means a limited partnership formed under the laws of any state other than this state or of the District of Columbia or under the laws of a foreign country.

SEC. 6. Section 171.5 is added to the Corporations Code, to read:

171.5. "Limited partnership" means a partnership formed by two or more persons and having one or more general partners and one or more limited partners, or their equivalents under any name.

SEC. 7. Section 190 of the Corporations Code is amended to read:

190. "Surviving corporation" means a corporation into which one or more other corporations or one or more limited partnerships are merged.

SEC. 8. Section 190.5 is added to the Corporations Code, to read:

190.5. "Surviving limited partnership" means a limited partnership into which one or more other limited partnerships or one or more corporations are merged.

SEC. 9. Section 1101.1 of the Corporations Code is amended to read:

1101.1. Subdivision (c) of Section 1113 and the last two sentences of Section 1101 do not apply to any transaction if the Commissioner of Corporations, the Superintendent of Banks, the Savings and Loan Commissioner, the Insurance Commissioner or, the Public Utilities Commission has approved the terms and conditions of the transaction and the fairness of such terms and conditions pursuant to Section 25142 or Section 696.5, 5750, or 5802 of the Financial Code or Section 838.5 of the Insurance Code.

SEC. 10. Section 1109 of the Corporations Code is amended to read:

1109. Whenever a domestic or foreign corporation or domestic or foreign limited partnership having any real property in this state merges or consolidates with another corporation or with a limited partnership pursuant to the laws of this state or of the state or place in which any constituent corporation or constituent limited partnership was incorporated or organized, and the laws of the state or place of incorporation or organization (including this state) of any disappearing corporation or disappearing limited partnership provide substantially that the making and filing of the agreement of merger or consolidation or certificate of ownership or certificate of merger vests in the surviving or consolidated corporation or surviving limited partnership all the real property of any disappearing corporation or disappearing limited partnership, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the disappearing corporation or disappearing limited partnership is located of either (a) a certificate prescribed by the Secretary of State, or (b) a copy of the agreement of merger or consolidation or certificate of ownership or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the

laws of which the merger or consolidation is effected, shall evidence record ownership in the surviving or consolidated corporation or surviving limited partnership, of all interest of the disappearing corporation or disappearing limited partnership in and to the real property located in that county.

SEC. 11. Section 1113 is added to the Corporations Code, to read:

1113. (a) Any one or more domestic corporations may merge with one or more domestic limited partnerships or one or more foreign limited partnerships. One or more foreign corporations may be parties to the merger. Any corporation or corporations and any one or more limited partnerships may merge with or into a corporation, which may be any one of the corporations, or they may merge with or into a limited partnership, which may be any one of the limited partnerships. Notwithstanding the provisions of this section, the merger of any number of corporations with any number of limited partnerships may be affected only if:

(1) In a merger in which a domestic limited partnership is a party to the merger, the domestic limited partnership is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party to the merger the foreign corporation is authorized by the laws under which it is formed to effect that merger.

(3) In a merger in which a foreign limited partnership is the surviving limited partnership, the laws of the jurisdiction under which the foreign limited partnership is organized authorize the merger.

(4) In a merger in which a foreign limited partnership is a disappearing limited partnership it is not prohibited by the laws under which it is organized from effecting that merger.

(b) Each corporation and limited partnership which desires to merge shall approve an agreement of merger. The board of each corporation which desires to merge shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each constituent limited partnership by those persons required to approve the merger by the laws under which it is organized. The constituent corporations and constituent limited partnerships shall be parties to the agreement of merger and other persons, including a parent party corporation (Section 1200), may be parties to the agreement of merger. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each constituent corporation and constituent limited partnership and the identity of the constituent corporation or constituent limited partnership that is the surviving corporation or surviving limited partnership.

(3) The amendments, if any, subject to Sections 900 and 907, to the articles of the surviving corporation, if applicable, to be effected by the merger. If any amendment changes the name of the surviving corporation, the new name may be the same as or similar to the name

of a disappearing domestic or foreign corporation, subject to subdivision (b) of Section 201.

(4) The manner of converting the shares of each of the constituent corporations into shares, partnership interests, or other securities of the surviving corporation or surviving limited partnership and, if any shares of any of the constituent corporations are not to be converted solely into shares, partnership interests, or other securities of the surviving corporation or surviving limited partnership, the cash, property, rights, interests or securities of any corporation or limited partnership which the holders of those shares are to receive in exchange for the shares. This cash, property, rights, interests, or securities of any corporation or limited partnership may be in addition to or in lieu of shares, partnership interests, or other securities of the surviving corporation or surviving limited partnership, or that the shares are canceled without consideration.

(5) Any other details or provisions as are required by the laws under which any constituent limited partnership is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2.

(6) Any other details or provisions as are desired, including, without limitation, a provision for the payment of cash in lieu of fractional shares or for any other arrangement consistent with the provisions of Section 407.

(c) Each share of the same class or series of any constituent corporation (other than the cancellation of shares held by a constituent corporation or its parent or a wholly owned subsidiary of either in another constituent corporation) shall, unless all shareholders of the class or series consent and except as provided in Section 407, be treated equally with respect to any distribution of cash, property, rights, interests, or securities. Notwithstanding paragraph (4) of subdivision (b), the nonredeemable common shares of a constituent corporation may be converted only into nonredeemable common shares of a surviving corporation or a parent party (Section 1200), if (1) a constituent corporation or a constituent limited partnership or its parent owns, directly or indirectly, prior to the merger shares of another constituent corporation representing more than 50 percent of the voting power of the other constituent corporation or limited partnership interests of another constituent limited partnership representing more than 50 percent of the limited partnership interests of the other constituent limited partnership entitled to vote with respect to the merger or (2) a constituent corporation or constituent limited partnership is a general partner of a constituent limited partnership, unless all of the shareholders of the class consent and except as provided in Section 407.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger or the certificate of merger, as is applicable, if the amendment is approved by the board of any constituent corporation and, if the

amendment changes any of the principal terms of the agreement, by the outstanding shares (Section 152), if required by Chapter 12 (commencing with Section 1200), in the same manner as the original agreement of merger. If the agreement of merger so amended is approved by the board and the outstanding shares of each of the constituent corporations and is approved by each of the constituent limited partnerships, the agreement of merger so amended shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other constituent corporations and constituent limited partnerships without further approval by the outstanding shares (Section 152), at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairman of the board, president, or a vice president and secretary or an assistant secretary acting on behalf of their respective corporations.

(g) (1) If the surviving entity is a corporation, after approval of a merger by the constituent corporations through approval by the board and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and the constituent limited partnerships, the surviving corporation shall file a copy of the agreement of merger with an officers' certificate of each constituent corporation attached stating the total number of outstanding shares of each class entitled to vote on the merger, that the principal terms of the agreement in the form attached were approved by that corporation by a vote of a number of shares of each class which equaled or exceeded the vote required, each class entitled to vote and the percentage vote required of each class, or that the merger agreement was entitled to be and was approved by the board alone under the provisions of Section 1201. In lieu of an officer's certificate for any constituent limited partnerships, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed. The certificate of merger shall be executed and acknowledged by each constituent limited partnership by those persons required to execute the certificate of merger by the laws under which the limited partnership is organized and, if applicable, on behalf of each constituent corporation by the chairman of the board, president, or a vice president and secretary or an assistant secretary of the respective corporation. The certificate of merger shall set forth, if a vote of the limited partners of a constituent limited partnership was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent limited partnerships are organized, including, if a

domestic limited partnership is a party to the merger, the information required under subdivision (a) of Section 15678.4. If equity securities of a parent party (Section 1200) of a constituent corporation are to be issued in the merger, the officers' certificate of that constituent corporation shall state either that no vote of the shareholders of the parent was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall thereupon be effective, subject to subdivision (c) of Section 110 and subject to the provisions of subdivision (j), and the several parties thereto shall be one corporation. The agreement of merger shall not be filed, however, until there has been filed by or on behalf of each corporation taxed under the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code), the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by the Bank and Corporation Tax Law have been paid or secured. The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(2) If the surviving entity is a limited partnership, after approval of a merger by the constituent corporations through approval by the board and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and the constituent limited partnerships, the constituent corporations and constituent limited partnerships shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each constituent corporation by the chairman of the board, president, or a vice president and secretary or an assistant secretary of the respective corporation and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in the certificate of limited partnership of the domestic constituent limited partnership) and by each foreign constituent limited partnership by one or more general partners. The certificate of merger shall set forth all of the following:

(A) The names and the Secretary of State's file numbers, if any, of each of the constituent limited partnerships and constituent corporations, separately identifying the disappearing limited partnerships and disappearing corporations and the surviving limited partnership.

(B) If the approval of the outstanding shares of a constituent corporation was required by Chapter 12 (commencing with Section 1200), a statement setting forth the total number of outstanding shares of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of shares of each class entitled to vote and the percentage vote required of each class.

(C) The future effective date or time, not more than 90 days

subsequent to the date of filing of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(D) Any other information required to be stated in the certificate of merger by the laws under which each constituent limited partnership is organized, including, if a domestic limited partnership is a party to the merger, the information required under subdivision (a) of Section 15678.4.

Unless a future effective date or time is provided in a certificate of merger, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger in the office of the Secretary of State and the several parties thereto shall be one limited partnership. The certificate of merger shall not be filed, however, until there has been filed by or on behalf of each corporation taxed under the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code), the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by the Bank and Corporation Tax Law have been paid or secured. The surviving limited partnership shall keep a copy of the agreement of merger at the office referred to in subdivision (a) of Section 15614 if a domestic limited partnership or at the business address specified in paragraph (5) of subdivision (a) of Section 15678.4 if a foreign limited partnership. Upon request of a holder of shares of a constituent corporation or a limited partner of a constituent limited partnership, the general partners of the surviving limited partnership shall promptly deliver to the holder of shares of a constituent corporation or a limited partner of a constituent limited partnership, a copy of the agreement of merger. A waiver by a shareholder or partner of the rights provided in the foregoing sentence shall be unenforceable.

(h) (1) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving corporation or surviving limited partnership and the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger.

(2) For all purposes for a merger in which the surviving entity is a domestic limited partnership a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of the constituent corporations, either by themselves or together with constituent limited partnerships, into the surviving limited partnership.

(i) (1) Upon a merger of corporations and limited partnerships pursuant to this section the separate existence of the disappearing corporations and disappearing limited partnership ceases and the surviving corporation or surviving limited partnership shall succeed,

without other transfer, to all the rights and property of each of the disappearing corporations and disappearing limited partnerships and shall be subject to all the debts and liabilities of each in the same manner as if the surviving corporation or surviving limited partnership had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent corporations and constituent limited partnerships shall be preserved unimpaired, provided that those liens upon property of a disappearing corporation or disappearing limited partnership shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing corporation or disappearing limited partnership may be prosecuted to judgment, which shall bind the surviving corporation or surviving limited partnership, or the surviving corporation or surviving limited partnership may be proceeded against or substituted in its place.

(4) Nothing in this section is intended to affect the liability of a general partner of a disappearing limited partnership in connection with the debts and liabilities of the disappearing limited partnership existing prior to the time the merger is effective.

(j) (1) The merger of any number of domestic corporations with any number of foreign corporations or foreign limited partnerships in a merger in which one or more limited partnerships is a party shall comply with subdivision (a) and this subdivision.

(2) If the surviving corporation or surviving limited partnership is a domestic corporation or domestic limited partnership, the merger proceedings with respect to that corporation or limited partnership and any domestic disappearing corporation shall conform to the provisions of this section, but if the surviving corporation or surviving limited partnership is a foreign corporation or foreign limited partnership, then, subject to the requirements of paragraph (4), subdivision (c), and of Section 407 and Chapters 12 (commencing with Section 1200) and 13 (commencing with Section 1300), with respect to any domestic constituent corporations, and Article 7.6 (commencing with Section 15679.1) of Chapter 3 of Title 2, with respect to any domestic constituent limited partnerships, the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation or the laws of the state or place of organization of the surviving limited partnership.

(3) If the surviving corporation or surviving limited partnership is a domestic corporation or domestic limited partnership, the certificate of merger, if the surviving entity is a limited partnership, or the agreement of merger with attachments, if the surviving entity is a corporation, shall be filed as provided in subdivision (g) and thereupon, subject to subdivision (c) of Section 110 or paragraph (2) of subdivision (g), as is applicable, the merger shall be effective as to each domestic constituent corporation and domestic constituent

limited partnership.

(4) If the surviving corporation or surviving limited partnership is a foreign corporation or foreign limited partnership, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving corporation or surviving limited partnership is organized, but, except as provided in paragraph (5), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent domestic corporation and a certificate of merger of each constituent limited partnership attached, which officers' certificates and certificates of merger shall conform to the requirements of paragraph (1) of subdivision (g). If one or more domestic limited partnerships is a disappearing limited partnership in a merger pursuant to this subdivision in which a foreign limited partnership is the surviving entity, a certificate of merger as required by subdivision (a) of Section 15678.4 shall also be filed at the same time as the filing of the agreement of merger.

(5) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of the domestic corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation or corporations as of the date of filing in this state.

(6) In a merger described in paragraphs (3) or (4), each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to this subdivision surrender its right to transact intrastate business as of the date of filing in this state regardless of the time of effectiveness as to a domestic disappearing corporation. With respect to each foreign disappearing limited partnership previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger or certificate of merger, as is applicable, pursuant to this subdivision automatically has the effect of a cancellation of registration for that foreign limited partnership without the necessity of the filing of a certificate of cancellation.

(7) A certificate of satisfaction of the Franchise Tax Board for each domestic disappearing corporation shall be filed when required by subdivision (g) or when required by Section 23334 of the Revenue and Taxation Code.

SEC. 12. Section 1201 of the Corporations Code is amended to read:

1201. (a) The principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of each class of each corporation the approval of whose board is required under Section 1200, except as provided in subdivision (b) and except that (unless otherwise provided in the articles) no approval of any class of outstanding preferred shares of the surviving or acquiring

corporation or parent party shall be required if the rights, preferences, privileges and restrictions granted to or imposed upon such class of shares remain unchanged (subject to the provisions of subdivision (c)). For the purpose of this subdivision, two classes of common shares differing only as to voting rights shall be considered as a single class of shares.

(b) No approval of the outstanding shares (Section 152) is required by subdivision (a) in the case of any corporation if such corporation, or its shareholders immediately before the reorganization, or both, shall own (immediately after the reorganization) equity securities, other than any warrant or right to subscribe to or purchase such equity securities, of the surviving or acquiring corporation or a parent party (subdivision (d) of Section 1200) possessing more than five-sixths of the voting power of the surviving or acquiring corporation or parent party. In making the determination of ownership by the shareholders of a corporation, immediately after the reorganization, of equity securities pursuant to the preceding sentence, equity securities which they owned immediately before the reorganization as shareholders of another party to the transaction shall be disregarded. For the purpose of this section only, the voting power of a corporation shall be calculated by assuming the conversion of all equity securities convertible (immediately or at some future time) into shares entitled to vote but not assuming the exercise of any warrant or right to subscribe to or purchase such shares.

(c) Notwithstanding the provisions of subdivision (b), a reorganization shall be approved by the outstanding shares (Section 152) of the surviving corporation in a merger reorganization if any amendment is made to its articles which would otherwise require such approval.

(d) Notwithstanding the provisions of subdivision (b), a reorganization shall be approved by the outstanding shares (Section 152) of any class of a corporation which is a party to a merger or sale-of-assets reorganization if holders of shares of that class receive shares of the surviving or acquiring corporation or parent party having different rights, preferences, privileges or restrictions than those surrendered. Shares in a foreign corporation received in exchange for shares in a domestic corporation have different rights, preferences, privileges and restrictions within the meaning of the preceding sentence.

(e) Notwithstanding the provisions of subdivisions (a) and (b), a reorganization shall be approved by the affirmative vote of at least two-thirds of each class of the outstanding shares of any close corporation if the reorganization would result in their receiving shares of a corporation which is not a close corporation; provided, however, that the articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.

(f) Notwithstanding the provisions of subdivisions (a) and (b), a reorganization shall be approved by the outstanding shares (Section

152) of any class of a corporation which is a party to a merger reorganization if holders of shares of that class receive interests of a surviving limited partnership in the merger.

(g) Any approval required by this section may be given before or after the approval by the board. Notwithstanding approval required by this section, the board may abandon the proposed reorganization without further action by the shareholders, subject to the contractual rights, if any, of third parties.

SEC. 13. Section 1300 of the Corporations Code is amended to read:

1300. (a) If the approval of the outstanding shares (Section 152) of a corporation is required for a reorganization under subdivisions (a) and (b) or subdivision (e) or (f) of Section 1201, each shareholder of the corporation entitled to vote on the transaction and each shareholder of a subsidiary corporation in a short-form merger may, by complying with this chapter, require the corporation in which the shareholder holds shares to purchase for cash at their fair market value the shares owned by the shareholder which are dissenting shares as defined in subdivision (b). The fair market value shall be determined as of the day before the first announcement of the terms of the proposed reorganization or short-form merger, excluding any appreciation or depreciation in consequence of the proposed action, but adjusted for any stock split, reverse stock split, or share dividend which becomes effective thereafter.

(b) As used in this chapter, "dissenting shares" means shares which come within all of the following descriptions:

(1) Which were not immediately prior to the reorganization or short-form merger either (A) listed on any national securities exchange certified by the Commissioner of Corporations under subdivision (o) of Section 25100 or (B) listed on the list of OTC margin stocks issued by the Board of Governors of the Federal Reserve System, and the notice of meeting of shareholders to act upon the reorganization summarizes this section and Sections 1301, 1302, 1303 and 1304; provided, however, that this provision does not apply to any shares with respect to which there exists any restriction on transfer imposed by the corporation or by any law or regulation; and provided, further, that this provision does not apply to any class of shares described in subparagraph (A) or (B) if demands for payment are filed with respect to 5 percent or more of the outstanding shares of that class.

(2) Which were outstanding on the date for the determination of shareholders entitled to vote on the reorganization and (A) were not voted in favor of the reorganization or, (B) if described in subparagraph (A) or (B) of paragraph (1) (without regard to the provisos in that paragraph), were voted against the reorganization, or which were held of record on the effective date of a short-form merger; provided, however, that subparagraph (A) rather than subparagraph (B) of this paragraph applies in any case where the approval required by Section 1201 is sought by written consent

rather than at a meeting.

(3) Which the dissenting shareholder has demanded that the corporation purchase at their fair market value, in accordance with Section 1301.

(4) Which the dissenting shareholder has submitted for endorsement, in accordance with Section 1302.

(c) As used in this chapter, "dissenting shareholder" means the recordholder of dissenting shares and includes a transferee of record.

SEC. 14. Section 15611 of the Corporations Code is amended to read:

15611. As used in this chapter, unless the context otherwise requires:

(a) "Acknowledged" means that an instrument is either of the following:

(1) Formally acknowledged as provided in Article 3 (commencing with Section 1180) of Chapter 4 of Title 4 of Part 4 of Division 2 of the Civil Code.

(2) Executed to include substantially the following wording preceding the signature: It is hereby declared that I am the person who executed this instrument, which execution is my act and deed.

Any certificate of acknowledgment taken without this state before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated.

(b) "Capital account" of a partner, unless otherwise provided in the partnership agreement, means the amount of the capital interest of that partner in the partnership consisting of that partner's original contribution, as (1) increased by any additional contributions and by that partner's share of the partnership's profits and (2) decreased by any distribution to that partner and by that partner's share of the partnership's losses.

(c) "Certificate of limited partnership" or "certificate" means the certificate referred to in Section 15621, including all amendments thereto.

(d) "Constituent corporation" means a corporation which is merged with or into one or more limited partnerships or other business entities and includes a surviving corporation.

(e) "Constituent limited partnership" means a limited partnership which is merged with or into one or more other limited partnerships or other business entities and includes a surviving limited partnership.

(f) "Constituent other business entity" means an other business entity that is merged with or into one or more limited partnerships and includes a surviving other business entity.

(g) "Contribution" means any money, property or services rendered, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted in this chapter, which a partner contributes to a limited partnership as capital in that partner's capacity as a partner pursuant to an agreement between the partners, including an agreement as to

value.

(h) "Disappearing limited partnership" means a constituent limited partnership which is not the surviving limited partnership.

(i) "Disappearing other business entity" means a constituent other business entity that is not the surviving other business entity.

(j) "Distribution" means the transfer of money or property by a partnership to its partners without consideration.

(k) "Domestic corporation" means a corporation formed under the laws of this state.

(*l*) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state or under the laws of a foreign country and having as partners one or more general partners and one or more limited partners (or their equivalents under any name).

(m) "Foreign other business entity" means an other business entity formed under the laws of any state other than this state or under the laws of a foreign country.

(n) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement or a person who has been admitted as a general partner pursuant to Section 15641, however, a limited liability company may not act as a general partner of a limited partnership organized pursuant to this chapter.

(o) "Interests of all partners" means the aggregate interests of all partners in the current profits derived from business operations of the partnership.

(p) "Interests of limited partners" means the aggregate interests of all limited partners in their respective capacities as limited partners in the current profits derived from business operations of the partnership.

(q) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement, or an assignee of a limited partnership interest who has become a limited partner pursuant to Section 15674, or, to the extent provided in subdivision (b) of Section 15662, a former general partner who has ceased to be a general partner.

(r) "Limited partnership" or "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(s) "Mail," unless otherwise provided in the partnership agreement, means first-class mail, postage prepaid, unless registered mail is specified. Registered mail includes certified mail.

(t) "Majority-in-interest of the limited partners," unless otherwise provided in the partnership agreement, means more than 50 percent of the interests of limited partners.

(u) "Other business entity" means a corporation, general partnership, business trust, real estate investment trust, or an unincorporated association (other than a nonprofit association), but

excluding a limited partnership.

(v) "Parent" of a specified limited partnership means each general partner of the limited partnership, each person possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of a general partner of the limited partnership, and a person owning, directly or indirectly, limited partnership interests possessing more than 50 percent of the aggregate voting power of the specified limited partnership.

(w) "Partner" means a limited or general partner. "Partner of record" means a partner named as a partner on the list maintained in accordance with subdivision (a) of Section 15615.

(x) "Partnership agreement" means any valid oral or written agreement of the partners as to the affairs of a limited partnership and the conduct of its business, including all amendments thereto. In the event the partnership agreement consists of an oral agreement and a dispute arises in connection with the agreement, the burden of proof shall be on the general partner or partners.

(y) "Person" means an individual, partnership, limited partnership (domestic or foreign), trust, estate, association, corporation, limited liability company, or other entity.

(z) "Proxy" means a written authorization signed by a partner or the partner's attorney-in-fact giving another person the power to vote with respect to the interest of that partner. "Signed," for the purpose of this section, means the placing of the partner's name on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the partner or partner's attorney-in-fact.

(aa) "Return of capital," unless otherwise provided in the partnership agreement, means any distribution to a partner to the extent that the partner's capital account, immediately after the distribution, is less than the amount of that partner's contributions to the partnership as reduced by prior distributions which were a return of capital.

(ab) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(ac) "Surviving limited partnership" means a limited partnership into which one or more other limited partnerships or other business entities are merged.

(ad) "Surviving other business entity" means an other business entity into which one or more limited partnerships are merged.

(ae) "Time a notice is given or sent," unless otherwise expressly provided, means the time a written notice to a partner or the limited partnership is deposited in the United States mails; or the time any other written notice is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient; or the time any oral notice is communicated, in person or by telephone or wireless, to the recipient or to a person at the

office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

(af) (1) "Transact intrastate business" means entering into repeated and successive transactions of business in this state, other than interstate or foreign commerce.

(2) A foreign limited partnership shall not be considered to be transacting intrastate business merely because it is a limited partner of a foreign limited partnership transacting intrastate business or because it is a limited partner of a domestic limited partnership.

(3) Without excluding other activities which may not constitute transacting intrastate business, a foreign limited partnership shall not be considered to be transacting intrastate business within the meaning of paragraph (1) solely by reason of carrying on in this state any one or more of the following activities:

(A) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims and disputes.

(B) Holding meetings of its partners or carrying on other activities concerning its internal affairs.

(C) Maintaining bank accounts.

(D) Maintaining offices or agencies for the transfer, exchange, and registration of its securities or depositaries with relation to its securities.

(E) Effecting sales through independent contractors.

(F) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance without this state before becoming binding contracts.

(G) Creating evidences of debt or mortgages, liens, or security interests on, real or personal property.

(H) Conducting an isolated transaction completed within a period of 180 days and not in the course of a number of repeated transactions of like nature.

SEC. 14.3. Section 15636 of the Corporations Code is amended to read:

15636. The rights and duties of the partners in relation to the limited partnership shall be determined, subject to any provision in the partnership agreement to the contrary, by the following rules:

(a) No limited partner shall be required to make any additional contribution to the limited partnership.

(b) Except for distributions made pursuant to Section 15664, no limited partner shall have a priority over any other limited partner, as to return of contributions or as to compensation as a limited partner by way of income.

(c) The obligation of a partner to make a contribution or return money or property distributed in violation of this chapter may be compromised only by the written consent of all the partners.

(d) No limited partner shall have the right to receive property other than money upon any distribution.

(e) A partner may not be compelled to accept a distribution of

any asset in kind from a limited partnership in lieu of a proportionate distribution of money being made to other partners.

(f) The limited partners shall have the right to vote on all matters specified in subparagraphs (A) to (E), inclusive, and (G), inclusive, of paragraph (5) of subdivision (b) of Section 15632 and the actions specified therein may only be taken by the general partners and then only with the affirmative vote of a majority in interest of the limited partners. The limited partners shall have the right to vote on, prepare or solicit written consents, or call a meeting of the partners for a vote on the matters specified in subparagraph (F) of paragraph (5) of subdivision (b) of Section 15632, and the action taken shall be effective without further action upon the vote or written consent of a majority-in-interest of all partners.

The limited partners shall also have the right to vote on matters specified in subparagraphs (H), (I), and (J) of paragraph (5) of subdivision (b) of Section 15632. Notwithstanding any other provision of this chapter or any provision of the partnership agreement to the contrary, the actions specified in subparagraphs (H), (I), and (J) may only be taken by the affirmative vote of a majority in interest of the limited partners or that greater interest provided in the partnership agreement.

SEC. 14.5. Section 15642 of the Corporations Code is amended to read:

15642. A person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(a) The general partner withdraws from the limited partnership as provided in Section 15662.

(b) The general partner is removed as a general partner.

(c) Unless otherwise provided in the partnership agreement, an order for relief against the general partner is entered under Chapter 7 of the federal bankruptcy law, or the general partner: (1) makes a general assignment for the benefit of creditors, (2) files a voluntary petition under the federal bankruptcy law, (3) files a petition or answer seeking for that partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, (4) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against that partner in any proceeding of this nature, or (5) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of that partner's properties.

(d) Unless otherwise provided in the partnership agreement, 60 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 60 days after the appointment without that partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of that partner's

properties, the appointment is not vacated or stayed, or within 60 days after the expiration of any such stay, the appointment is not vacated.

(e) In the case of a general partner who is an individual, either of the following:

(1) The death of that partner.

(2) The entry by a court of competent jurisdiction of an order adjudicating the partner incompetent to manage the general partner's estate.

(f) Unless otherwise provided in the partnership agreement, in the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee, in which case the new trustee automatically becomes the new general partner).

(g) Unless otherwise provided in the partnership agreement, in the case of a general partner that is a separate partnership, the dissolution of the separate partnership.

(h) In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation.

(i) In the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited partnership.

Notwithstanding the provisions of this section, a person who ceases to be a general partner of a limited partnership, shall be deemed to be acting as a general partner with respect to a third party doing business with the limited partnership, until an amended certificate of limited partnership is filed in accordance with Section 15622.

SEC. 15. Section 15678.1 of the Corporations Code is amended to read:

15678.1. The following entities may be merged pursuant to this article:

(a) Two or more limited partnerships into one limited partnership.

(b) One or more limited partnerships and one or more other business entities into one of those other business entities.

(c) One or more limited partnerships and one or more other business entities into one limited partnership.

Notwithstanding this section, the merger of any number of limited partnerships with any number of other business entities may be effected only if the other business entities that are organized in California are authorized by the laws under which they are organized to effect the merger, and (1) if a limited partnership is the surviving limited partnership, the foreign other business entities are not prohibited by the laws under which they are organized from effecting that merger, and (2) if a foreign limited partnership or foreign other business entity is the survivor of the merger, the laws of the jurisdiction under which the survivor is organized authorize that merger. Notwithstanding the first sentence of this paragraph, if one or more domestic corporations is also a party to the merger

described in that sentence, the merger may be effected only if, with respect to any foreign other business entity which is a corporation, the foreign corporation is authorized by the laws under which it is organized to effect that merger.

SEC. 16. Section 15678.2 of the Corporations Code is amended to read:

15678.2. (a) Each limited partnership and other business entity which desires to merge shall approve an agreement of merger. The agreement of merger shall be approved by all general partners of each constituent limited partnership and the principal terms of the merger shall be approved by a majority in interest of each class of limited partners of each constituent limited partnership, unless a greater approval is required by the partnership agreement of the constituent limited partnership. Notwithstanding the previous sentence, if the limited partners of any constituent limited partnership become personally liable for any obligations of a constituent limited partnership or constituent other business entity as a result of the merger, the principal terms of the agreement of merger shall be approved by all of the limited partners of the constituent limited partnership, unless the agreement of merger provides that all limited partners will have the dissenters' rights provided in Article 7.6 (commencing with Section 15679.1). The agreement of merger shall be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which it is organized. Other persons, including a parent of a constituent limited partnership, may be parties to the agreement of merger. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of organization of the surviving limited partnership or surviving other business entity, and of each disappearing limited partnership and disappearing other business entity, and the agreement of merger may change the name of the surviving limited partnership, which new name may be the same as or similar to the name of a disappearing domestic or foreign limited partnership, subject to Section 15612.

(3) The manner of converting the partnership interests of each of the constituent limited partnerships into partnership interests, shares, or other securities of the surviving limited partnership or surviving other business entity, and, if partnership interests of any of the constituent limited partnerships are not to be converted solely into partnership interests, shares, or other securities of the surviving limited partnership or surviving other business entity, the cash, property, rights, interests, or securities which the holders of the partnership interests are to receive in exchange for the partnership interests, which cash, property, rights, interests, or securities may be in addition to or in lieu of partnership interests, shares, or other securities of the surviving limited partnership or surviving other business entity, or that the partnership interests are canceled

without consideration.

(4) Any other details or provisions as are required by the laws under which any constituent other business entity is organized, including, if a domestic corporation is a party to the merger, subdivision (b) of Section 1113.

(5) Any other details or provisions that are desired, including, without limitation, a provision for the treatment of fractional partnership interests.

(b) Each limited partnership interest of the same class of any constituent limited partnership (other than a limited partnership interest in another constituent limited partnership that is being canceled and that is held by a constituent limited partnership or its parent or a limited partnership of which the constituent limited partnership is a parent) shall, unless all limited partners of the class consent, be treated equally with respect to any distribution of cash, property, rights, interests, or securities. Notwithstanding this subdivision (b), except in a merger of a limited partnership with a limited partnership in which it controls at least 90 percent of the limited partnership interests entitled to vote with respect to the merger, the nonredeemable limited partnership interests of a constituent limited partnership may be converted only into nonredeemable limited partnership interests or securities of the surviving limited partnership or other business entity or a parent if a constituent limited partnership or a constituent other business entity or its parent owns, directly or indirectly, prior to the merger, limited partnership interests of another constituent limited partnership or securities of a constituent other business entity representing more than 50 percent of the limited partnership interests or securities entitled to vote with respect to the merger of the other constituent limited partnership or constituent other business entity or more than 50 percent of the voting power, as defined in Section 194.5, of a constituent other business entity which is a domestic corporation, unless all of the limited partners of the class consent. This subdivision shall apply only to constituent limited partnerships with over 35 limited partners.

(c) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the certificate of merger or the agreement of merger, as provided in Section 15678.4, if the amendment is approved by the general partners of each constituent limited partnership in the same manner as required for approval of the original agreement of merger and, if the amendment changes any of the principal terms of the agreement of merger, the amendment is approved by the limited partners of each constituent limited partnership in the same manner and to the same extent as required for the approval of the original agreement of merger, and by each of the constituent other business entities.

(d) The general partners of a constituent limited partnership may, in their discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other constituent limited

partnerships and constituent other business entities, without further approval by the limited partnership interests, at any time before the merger is effective.

(e) An agreement of merger approved in accordance with subdivision (a) may (1) effect any amendment to the partnership agreement of any constituent limited partnership or (2) effect the adoption of a new partnership agreement for a constituent limited partnership if it is the surviving limited partnership in the merger. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger. Notwithstanding the above provisions of this subdivision, if a greater number of limited partners is required to approve an amendment to the partnership agreement of a constituent limited partnership than is required to approve the agreement of merger pursuant to subdivision (a), and the number of limited partners that approve the agreement of merger is less than the number of limited partners required to approve an amendment to the partnership agreement of the constituent limited partnership, any amendment to the partnership agreement or adoption of a new partnership agreement of that constituent limited partnership made pursuant to the first sentence of this subdivision shall be effective only if the agreement of merger provides that all of the limited partners shall have the dissenter's rights provided in Article 7.6 (commencing with Section 15679.1).

(f) The surviving limited partnership or surviving other business entity shall keep the agreement of merger at the office referred to in subdivision (a) of Section 15614 or at the business address specified in paragraph (5) of subdivision (a) of Section 15678.4, as applicable, and, upon the request of a limited partner of a constituent limited partnership or a holder of shares or other securities of a constituent other business entity, the general partners of the surviving limited partnership or the authorized person of the surviving other business entity shall promptly deliver to the limited partner or the holder of shares or other securities, at the expense of the surviving limited partnership or surviving other business entity, a copy of the agreement of merger. A waiver by a partner or holder of shares or other securities of the rights provided in this subdivision shall be unenforceable.

SEC. 17. Section 15678.4 of the Corporations Code is amended to read:

15678.4. (a) If the surviving entity is a limited partnership or an other business entity (other than a corporation in a merger in which a domestic corporation is a constituent party), after approval of a merger by the constituent limited partnerships and any constituent other business entities, the constituent limited partnerships and constituent other business entities shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each

domestic constituent limited partnership by all general partners (unless a lesser number is provided in the certificate of limited partnership of the domestic constituent limited partnership) and by each foreign constituent limited partnership by one or more general partners, and by each constituent other business entity by those persons required to execute the certificate of merger by the laws under which the constituent other business entity is organized. The certificate of merger shall set forth all of the following:

(1) The names and the Secretary of State's file numbers, if any, of each of the constituent limited partnerships and constituent other business entities, separately identifying the disappearing limited partnerships and disappearing other business entities and the surviving limited partnership or surviving other business entity.

(2) If a vote of the limited partners was required under Section 15678.2, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class.

(3) If the surviving entity is a limited partnership and not an other business entity, any change required to the information set forth in the certificate of limited partnership of the surviving limited partnership resulting from the merger, including any change in the name of the surviving limited partnership resulting from the merger. The filing of a certificate of merger setting forth any such changes to the certificate of limited partnership of the surviving limited partnership shall have the effect of the filing of a certificate of amendment by the surviving limited partnership, and the surviving limited partnership need not file a certificate of amendment under Section 15622 to reflect those changes.

(4) The future effective date or time (which shall be a date or time certain not more than 90 days subsequent to the date of filing) of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(5) If the surviving entity is an other business entity or a foreign limited partnership, the full name, type of entity, legal jurisdiction in which the entity was organized and by whose laws its internal affairs are governed, and the address of the principal place of business of the entity.

(6) Any other information required to be stated in the certificate of merger by the laws under which each constituent other business entity is organized, including, if a domestic corporation is a party to the merger, paragraph (2) of subdivision (g) of Section 1113.

If the surviving entity is a foreign limited partnership in a merger in which a domestic corporation is a disappearing other business entity, a copy of the agreement of merger and attachments as required under paragraph (1) of subdivision (g) of Section 1113 shall be filed at the same time as the filing of the certificate of merger.

(b) If the surviving entity is a domestic corporation or a foreign corporation in a merger in which a domestic corporation is a constituent party, after approval of the merger by the constituent limited partnerships and constituent other business entities, the surviving corporation shall file in the office of the Secretary of State a copy of the agreement of merger and attachments required under paragraph (1) of subdivision (g) of Section 1113. The certificate of merger shall be executed and acknowledged by each domestic constituent limited partnership by all general partners, unless a lesser number is provided in the certificate of limited partnership of the domestic constituent limited partnership.

(c) A certificate of merger or the agreement of merger, as is applicable under subdivision (a) or (b), shall have the effect of the filing of a certificate of cancellation for each disappearing limited partnership, and no disappearing limited partnership need file a certificate of dissolution or a certificate of cancellation under Section 15623 as a result of the merger.

(d) If a disappearing other business entity is a foreign corporation qualified to transact intrastate business in this state, a certificate of satisfaction of the Franchise Tax Board as required by Section 23334 of the Revenue and Taxation Code shall be filed with the certificate of merger or agreement of merger, as is applicable under subdivision (a) or (b). By the filing of the certificate of merger or agreement of merger, as is applicable, the foreign corporation shall automatically surrender its right to transact intrastate business.

SEC. 18. Section 15678.5 of the Corporations Code is amended to read:

15678.5. (a) Unless a future effective date or time is provided in a certificate of merger or the agreement of merger, if an agreement of merger is required to be filed under Section 15678.4, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger or the agreement of merger, as is applicable, in the office of the Secretary of State.

(b) (1) For all purposes, a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of (A) the constituent limited partnerships (either by themselves or together with constituent other business entities) into the surviving other business entity, or (B) the constituent limited partnerships or the constituent other business entities, or both, into the surviving limited partnership.

(2) In a merger in which the surviving entity is a corporation in a merger in which a domestic corporation and a domestic limited partnership are parties to the merger, a copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving corporation and the performance of

the conditions necessary to the adoption of any amendment to the articles of incorporation of the surviving corporation, if applicable, contained in the agreement of merger.

SEC. 19. Section 15678.6 of the Corporations Code is amended to read:

15678.6. (a) Upon a merger of limited partnerships or limited partnerships and other business entities pursuant to this chapter, the separate existence of the disappearing limited partnerships and disappearing other business entities ceases and the surviving limited partnership or surviving other business entity shall succeed, without other transfer, act or deed, to all the rights and property, whether real, personal, or mixed, of each of the disappearing limited partnerships and disappearing other business entities and shall be subject to all the debts and liabilities of each in the same manner as if the surviving limited partnership or surviving other business entity had itself incurred them.

(b) All rights of creditors and all liens upon the property of each of the constituent limited partnerships and constituent other business entities shall be preserved unimpaired and may be enforced against the surviving limited partnership or the surviving other business entity to the same extent as if the debt, liability or duty which gave rise to that lien had been incurred or contracted by it, provided that such liens upon the property of a disappearing limited partnership or disappearing other business entity shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(c) Any action or proceeding pending by or against any disappearing limited partnership or disappearing other business entity may be prosecuted to judgment, which shall bind the surviving limited partnership or surviving other business entity, or the surviving limited partnership or surviving other business entity may be proceeded against or be substituted in the disappearing limited partnership's or disappearing other business entity's place.

(d) Nothing in this article is intended to affect the liability a general partner of a disappearing limited partnership may have in connection with the debts and liabilities of the disappearing limited partnership existing prior to the time the merger is effective.

SEC. 20. Section 15678.7 of the Corporations Code is amended to read:

15678.7. (a) The merger of any number of domestic limited partnerships with any number of foreign limited partnerships or foreign other business entities shall be required to comply with Section 15678.1.

(b) If the surviving entity is a domestic limited partnership or a domestic other business entity, the merger proceedings with respect to that limited partnership or other business entity and any domestic disappearing limited partnership shall conform to the provisions of this chapter governing the merger of domestic limited partnerships, but if the surviving entity is a foreign limited partnership or a foreign

other business entity, then, subject to the requirements of subdivision (d) and Article 7.6 (commencing with Section 15679.1) and, with respect to any domestic constituent corporation, Section 1113 and Chapters 12 (commencing with Section 1200) and 13 (commencing with Section 1300) of Division 1 of Title 1, the merger proceedings may be in accordance with the laws of the state or place of organization of the surviving limited partnership or surviving other business entity.

(c) If the surviving entity is a domestic limited partnership or domestic other business entity, other than a domestic corporation, the certificate of merger shall be filed as provided in subdivision (a) of Section 15678.4, and thereupon, subject to subdivision (a) of Section 15678.5, the merger shall be effective as to each domestic constituent limited partnership and domestic constituent other business entity. If the surviving entity is a domestic corporation, the agreement of merger with attachments shall be filed as provided in subdivision (b) of Section 15678.4, and thereupon, subject to subdivision (a) of Section 15678.5, the merger shall be effective as to each domestic constituent limited partnership and domestic constituent other business entity unless another effective date is provided for in Chapter 11 (commencing with Section 1100) of Division 1 of Title 1, with respect to any constituent corporation or constituent limited partnership.

(d) If the surviving entity is a foreign limited partnership or foreign other business entity, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving limited partnership or surviving other business entity is organized, but shall be effective as to any domestic disappearing limited partnership as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a certificate of merger or agreement of merger as provided in Section 15678.4.

(e) If a merger described in subdivision (c) or (d) also includes a foreign disappearing limited partnership previously registered for the transaction of intrastate business in this state pursuant to Section 15692, the filing of the certificate of merger or agreement of merger, as is applicable under Section 15678.4, automatically has the effect of a cancellation of registration for that foreign limited partnership pursuant to Section 15696 without the necessity of the filing of a certificate of cancellation.

(f) The provisions of subdivision (b) of Section 15678.2 and Article 7.6 (commencing with Section 15679.1) apply to the rights of the limited partners of any of the constituent limited partnerships which are domestic limited partnerships and of any domestic limited partnership which is a parent of any foreign constituent limited partnership.

SEC. 21. Section 15678.8 of the Corporations Code is amended to read:

15678.8. Whenever a domestic or foreign limited partnership or other business entity having any real property in this state merges

with another limited partnership or other business entity pursuant to the laws of this state or of the state or place in which any constituent limited partnership or constituent other business entity was organized, and the laws of the state or place of organization (including this state) of any disappearing limited partnership or disappearing other business entity provide substantially that the making and filing of the agreement of merger or certificate of merger vests in the surviving limited partnership or surviving other business entity all the real property of any disappearing limited partnership and disappearing other business entity, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the disappearing limited partnership or disappearing other business entity is located of either (a) a certificate of merger certified by the Secretary of State, or other certificate prescribed by the Secretary of State, or (b) a copy of the agreement of merger or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected, shall evidence record ownership in the surviving limited partnership or surviving other business entity of all interest of such disappearing limited partnership or disappearing other business entity in and to the real property located in that county.

SEC. 21.5. Section 15681 of the Corporations Code is amended to read:

15681. A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(a) At the time or upon the happening of events specified in the partnership agreement.

(b) Except as otherwise provided in the partnership agreement, written consent of all general partners and a majority in interest of the limited partners.

(c) A general partner ceases to be a general partner under Section 15642, unless (1) at the time there is at least one other general partner and the partnership agreement permits the business of the limited partnership to be continued by the remaining general partner or partners, if any, and such partner or partners do so, or (2) a majority in interest of the limited partners or the greater interest provided in the partnership agreement agree in writing to continue the business of the limited partnership and to admit one or more general partners.

(d) Entry of a decree of judicial dissolution under Section 15682.

SEC. 22. Section 12202 of the Government Code is amended to read:

12202. (a) For purposes of the merger of a corporation solely with one or more other corporations, not including the merger of one or more corporations with one or more limited partnerships or other types of business entities, the fee for filing an agreement of merger, a certificate of ownership, a certificate of merger or a document pursuant to subdivision (d) of Section 1108 of the Corporations Code

is one hundred dollars ($100) for any or all of the filings for each merger transaction regardless of the number of constituent corporations.

(b) For purposes of the merger of one or more corporations with one or more limited partnerships or other types of business entities, the fee for filing all merger documents required by the Corporations Code is one hundred fifty dollars ($150) for any or all of the filings for each merger transaction, regardless of the number of constituent corporations, limited partnerships, or other business entities.

SEC. 23. Section 12214 of the Government Code is amended to read:

12214. (a) The fee for filing an amendment to the certificate of limited partnership or to the application for registration of a foreign limited partnership is fifteen dollars ($15). The fee for filing a certificate of continuation for a domestic limited partnership after a certificate of dissolution has been filed is fifteen dollars ($15). There is no fee for filing a certificate of dissolution or certificate of cancellation by a limited partnership, either domestic or foreign.

(b) For purposes of the merger of a limited partnership solely with one or more other limited partnerships, not including the merger of one or more limited partnerships with one or more corporations or other types of business entities, the fee for filing a certificate of merger pursuant to Section 15678.4 of the Corporations Code, is seventy dollars ($70) per certificate, regardless of the number of constituent limited partnerships.

(c) For purposes of the merger of one or more limited partnerships with one or more corporations or other types of business entities, the fee for filing all merger documents required by the Corporations Code, is one hundred fifty dollars ($150) for any or all of the filings, regardless of the number of constituent limited partnerships, corporations, or other business entities.

SEC. 24. Nothing in this act shall be construed to modify or alter the prohibition contained in Sections 15503 and 15616 of the Corporations Code or Section 1648 of the Insurance Code, or modify or alter any similar prohibition relating to the operation of a business in limited partnership form.

SEC. 25. Nothing in this act shall be construed to modify or impair any rights of limited partners under the Thompson-Killea Limited Partners Protection Act of 1992 (Chapter 1183 of the Statutes of 1992).

CHAPTER 544

An act to add Section 204.3 to the Labor Code, relating to compensation.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 204.3 is added to the Labor Code, to read:

204.3. (a) An employee may receive, in lieu of overtime compensation, compensating time off at a rate of not less than one and one-half hours for each hour of employment for which overtime compensation is required by law. If an hour of employment would otherwise be compensable at a rate of more than one and one-half times the employee's regular rate of compensation, then the employee may receive compensating time off commensurate with the higher rate.

(b) An employer may provide compensating time off under subdivision (a) if the following four conditions are met:

(1) The compensating time off is provided pursuant to applicable provisions of a collective bargaining agreement, memorandum of understanding, or other written agreement between the employer and the duly authorized representative of the employer's employees; or, in the case of employees not covered by the aforementioned agreement or memorandum of understanding, pursuant to a written agreement entered into between the employer and employee before the performance of the work.

(2) The employee has not accrued compensating time in excess of the limit prescribed by subdivision (c).

(3) The employee has requested, in writing, compensating time off in lieu of overtime compensation.

(4) The employee is regularly scheduled to work no less than 40 hours in a workweek.

(c) (1) An employee may not accrue more than 240 hours of compensating time off. Any employee who has accrued 240 hours of compensating time off shall, for any additional overtime hours of work, be paid overtime compensation.

(2) If compensation is paid to an employee for accrued compensating time off, the compensation shall be paid at the regular rate earned by the employee at the time the employee receives payment.

(d) An employee who has accrued compensating time off authorized to be provided under subdivision (a) shall, upon termination of employment, be paid for the unused compensating time at a rate of compensation not less than the average regular rate received by the employee during the last three years of the employee's employment, or the final regular rate received by the

employee, whichever is higher.

(e) (1) An employee who has accrued compensating time off authorized to be provided under subdivision (a), and who has requested the use of that compensating time, shall be permitted by the employee's employer to use the time within a reasonable period after making the request, if the use of the compensating time does not unduly disrupt the operations of the employer.

(2) Upon the request of an employee, the employer shall pay overtime compensation in cash in lieu of compensating time off for any compensating time off that has accrued for at least two pay periods.

(3) For purposes of determining whether a request to use compensating time has been granted within a reasonable period, the following factors shall be relevant:

(A) The normal schedule of work.

(B) Anticipated peak workloads based on past experience.

(C) Emergency requirements for staff and services.

(D) The availability of qualified substitute staff.

(f) Every employer shall keep records that accurately reflect compensating time earned and used.

(g) For purposes of this section, the terms "compensating time" and "compensating time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(h) This section shall not apply to any employee exempt from the overtime provisions of the California wage orders.

(i) This section shall not apply to any employee who is subject to the following wage orders of the Industrial Welfare Commission: Orders No. 8-80, 13-80, and 14-80 (affecting industries handling products after harvest, industries preparing agricultural products for market on the farm, and agricultural occupations), Order No. 3-80 (affecting the canning, freezing, and preserving industry), Orders No. 5-89 and 10-89 (affecting the public housekeeping and amusement and recreation industries), and Order No. 1-89 (affecting the manufacturing industry).

CHAPTER 545

An act to repeal Sections 4 and 5 of Chapter 139 of the Statutes of 1990, relating to public social services.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 4 of Chapter 139 of the Statutes of 1990 is repealed.

SEC. 2. Section 5 of Chapter 139 of the Statutes of 1990 is repealed.

SEC. 3. The Legislature finds and declares that the effect of the repeal of Sections 4 and 5 of Chapter 139 of the Statutes of 1990, pursuant to Sections 1 and 2 of this act, is that Sections 1 to 3, inclusive, of Chapter 139 of the Statutes of 1990 shall become operative on January 1, 1994.

CHAPTER 546

An act to amend Section 6254.1 of the Government Code, and to amend Section 12814.5 of, and to add Sections 12804.8 and 14906 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 6254.1 of the Government Code is amended to read:

6254.1. (a) Except as provided in Section 6254.7, nothing in this chapter requires disclosure of records that are the residence address of any person contained in the records of the Department of Housing and Community Development, if the person has requested confidentiality of that information, in accordance with Section 18081 of the Health and Safety Code.

(b) Nothing in this chapter requires the disclosure of the residence or mailing address of any person in any record of the Department of Motor Vehicles except in accordance with Section 1808.21 of the Vehicle Code.

(c) Nothing in this chapter requires the disclosure of the results of a test undertaken pursuant to Section 12804.8 of the Vehicle Code.

SEC. 2. Section 12804.8 is added to the Vehicle Code, to read:

12804.8. (a) Notwithstanding any other provision of law, the department may conduct studies to develop and identify

examinations and tests, to more accurately identify persons who, due to physical or mental factors, or both, are not competent or qualified to safely operate a motor vehicle.

(b) In addition to any other tests or examinations required under this code, the department may require any person applying for an original driver's license or renewal of a driver's license, or any person subject to reexamination under Section 13801, to submit to one or more tests or examinations which are part of a study.

(c) The results and information obtained during the study, through the tests and examinations specified in subdivision (a), shall be used only to assess and evaluate the effectiveness of the tests and examinations and to select tests and examinations for use by the department, and for no other purpose. The results of the tests are confidential and shall not be disclosed to any person.

(d) No public entity or employee shall be liable for any loss, detriment, or injury resulting directly or indirectly from the department's acts or failure to act on information received through the studies.

SEC. 3. Section 12814.5 of the Vehicle Code is amended to read:

12814.5. (a) The director may establish a program to evaluate the traffic safety and other effects of renewing driver's licenses by mail. The director may renew by mail driver's licenses for licensees not holding a probationary license, and whose records, for the two years immediately preceding the determination of eligibility for the renewal, show no notification of a violation of subdivision (a) of Section 40509, a total violation point count not greater than one as determined in accordance with Section 12810, and no suspension of the driving privilege pursuant to Section 13353.2.

(b) The director may terminate the renewal by mail program authorized by this section at any time the department determines that the program has an adverse impact on traffic safety.

(c) No renewal by mail shall be granted to any person who is 70 years of age or older.

(d) The department shall charge a fee of twelve dollars ($12) for each license renewal granted pursuant to subdivision (a).

(e) The department shall notify each licensee granted a renewal by mail pursuant to this section of major changes to the Vehicle Code affecting traffic laws occurring during the prior four-year period.

(f) The department shall not renew a driver's license by mail if the license has been previously renewed by mail two consecutive times for four-year periods.

SEC. 4. Section 14906 is added to the Vehicle Code, to read:

14906. (a) In addition to the fees required by Section 14904, the department may require payment of a fee sufficient to pay the actual cost, as determined by the department, for giving any notice in connection with a suspension or revocation in accordance with Sections 22 and 29.

(b) This section does not apply to any suspension or revocation that is set aside by the department or a court.

CHAPTER 547

An act to amend Section 23701g of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

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

SECTION 1. Section 23701g of the Revenue and Taxation Code is amended to read:

23701g. Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for those purposes, and no part of the net earnings of which inures to the benefit of any private shareholder.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 548

An act to amend Section 629.48 of the Penal Code, relating to interception of wire communications.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 629.48 of the Penal Code is amended to read:

629.48. This chapter shall remain in effect only until January 1, 1999, and as of that date is repealed.

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

CHAPTER 549

An act to amend Section 11374.5 of the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 11374.5 of the Health and Safety Code is amended to read:

11374.5. (a) Any manufacturer of a controlled substance who disposes of any hazardous substance that is a controlled substance or a chemical used in the manufacture of a controlled substance in violation of any law regulating the disposal of hazardous substances or hazardous waste is guilty of a public offense punishable by imprisonment in the state prison for two, three, or four years or in the county jail not exceeding one year.

(b) (1) In addition to any other penalty or liability imposed by law, a person who is convicted of violating subdivision (a) shall pay a penalty equal to the amount of the actual cost of any gross evidence removal of hazardous substances or hazardous waste that is incurred by an agency as a result of the illegal disposal. The court shall transmit all penalties collected pursuant to this subdivision to the county treasurer of the county in which the court is located for deposit in a special account in the county treasury. The county treasurer shall pay that money at least once a month to the agency that incurred the cost for the gross evidence removal. The county may retain up to 5 percent of any assessed penalty for appropriate and reasonable administrative costs attributable to the collection and disbursement of the penalty.

(2) If the Department of Justice has incurred the cost for the gross evidence removal, the county treasurer shall transfer funds in the amount of the penalty collected to the Treasurer, who shall deposit the money in the Controlled Substance Disposal Account, which is hereby created in the General Fund in the State Treasury. The Department of Justice may expend the money in the Controlled Substance Disposal Account, upon appropriation by the Legislature, to cover the cost of gross evidence removals.

(c) As used in this section the following terms have the following meaning:

(1) "Dispose" means to abandon, deposit, intern, or otherwise discard as a final action after use has been achieved or a use is no longer intended.

(2) "Hazardous substance" has the same meaning as defined in Section 25316.

(3) "Hazardous waste" has the same meaning as defined in Section 25117.

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

CHAPTER 550

An act to amend Section 23190 of the Vehicle Code, relating to driving offenses.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 23190 of the Vehicle Code is amended to read:

23190. (a) If any person is convicted of a violation of Section 23153 and the offense occurred within seven years of two or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, which resulted in convictions, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand fifteen dollars ($1,015) nor more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352.

(b) If any person is convicted of a violation of Section 23153, and the act or neglect proximately causes great bodily injury, as defined in Section 12022.7 of the Penal Code, to any person other than the driver, and the offense occurred within seven years of two or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, which resulted in convictions, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand fifteen dollars ($1,015) nor more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of

subdivision (a) of Section 13352.

(c) If any person is convicted under subdivision (b), and the offense for which the person is convicted occurred within seven years of four or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, that resulted in convictions, that person shall, in addition and consecutive to the sentences imposed under subdivision (b), be punished by an additional term of imprisonment in the state prison for three years.

The enhancement allegation provided in the subdivision shall be pleaded and proved as provided by law.

(d) Any person convicted of Section 23153 punishable under this section shall be designated as an habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

(e) Any person confined in state prison under this section shall be ordered by the court to participate in an alcohol or drug program, or both, that is available at the prison during the person's confinement.

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

CHAPTER 551

An act to amend Section 11353.6 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 11353.6 of the Health and Safety Code is amended to read:

11353.6. (a) This section shall be known, and may be cited, as the Juvenile Drug Trafficking and Schoolyard Act of 1988.

(b) Any person 18 years of age or over who is convicted of a violation of Section 11351.5, 11352, or 11379.6, as those sections apply to paragraph (1) of subdivision (f) of Section 11054, or of Section

11351, 11352, or 11379.6, as those sections apply to paragraph (11) of subdivision (c) of Section 11054, or of Section 11378, 11379, or 11379.6, as those sections apply to paragraph (2) of subdivision (d) of Section 11055, or of a conspiracy to commit one of those offenses, where the violation takes place upon the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs, shall receive an additional punishment of 3, 4, or 5 years at the court's discretion.

(c) Any person 18 years of age or older who is convicted of a violation pursuant to subdivision (b) which involves a minor who is at least four years younger than that person, as a full and separately served enhancement to that provided in subdivision (b), shall be punished by imprisonment in the state prison for 3, 4, or 5 years at the court's discretion.

(d) The additional terms provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(e) The additional terms provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(g) "Within 1,000 feet of a public or private elementary, vocational, junior high, or high school" means any public area or business establishment where minors are legally permitted to conduct business which is located within 1,000 feet of any public or private elementary, vocational, junior high, or high school.

CHAPTER 552

An act to amend Section 11413 of the Penal Code, relating to terrorism.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 11413 of the Penal Code is amended to read:

11413. (a) Any person who explodes, ignites, or attempts to explode or ignite any destructive device or any explosive, or who commits arson, in or about any of the places listed in subdivision (b), for the purpose of terrorizing another or in reckless disregard of

terrorizing another is guilty of a felony, and shall be punished by imprisonment in the state prison for three, five, or seven years, and a fine not exceeding ten thousand dollars ($10,000).

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

(1) Any health facility licensed under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, or any place where medical care is provided by a licensed health care professional.

(2) Any church, temple, synagogue, or other place of worship.

(3) The buildings, offices, and meeting sites of organizations that counsel for or against abortion or among whose major activities are lobbying, publicizing, or organizing with respect to public or private issues relating to abortion.

(4) Any place at which a lecture, film-showing, or other private meeting or presentation that educates or propagates with respect to abortion practices or policies, whether on private property or at a meeting site authorized for specific use by a private group on public property, is taking place.

(5) Any bookstore or public or private library.

(6) Any building or facility designated as a courthouse.

(7) The home or office of a judicial officer.

(8) Any building or facility regularly occupied by county probation department personnel in which the employees perform official duties of the probation department.

(c) As used in this section, "judicial officer" means a magistrate, judge, justice, commissioner, referee, or any person appointed by a court to serve in one of these capacities, of any state or federal court located in this state.

(d) As used in this section, "terrorizing" means to cause a person of ordinary emotions and sensibilities to fear for personal safety.

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

CHAPTER 553

An act to amend Section 1170.13 of the Penal Code, relating to sentencing.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 1170.13 of the Penal Code is amended to read:

1170.13. (a) Notwithstanding subdivision (a) of Section 1170.1 which provides for the imposition of a subordinate term for a consecutive offense of one-third of the middle term of imprisonment, if a person is convicted pursuant to subdivision (b) of Section 139, the subordinate term for each consecutive offense shall consist of 100 percent of the middle term. The total term of imprisonment imposed pursuant to this subdivision may exceed five years, but shall not exceed 15 years.

(b) Notwithstanding subdivision (c) of Section 1170.1, whenever a person is convicted pursuant to subdivision (b) of Section 139 while the person is confined in a state prison, or is subject to reimprisonment for escape from custody, the term of imprisonment for all those convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. Punishment for the new offenses shall be calculated as provided in subdivision (a) of this section, except that the total term of imprisonment imposed may exceed 15 years.

(c) Notwithstanding subdivision (g) of Section 1170.1, a term of imprisonment imposed pursuant to this section may exceed twice the number of years imposed by the trial court as a base term pursuant to subdivision (b) of Section 1170.

CHAPTER 554

An act to amend Section 4502 of the Penal Code, relating to prison weapons.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 4502 of the Penal Code is amended to read:

4502. (a) Every person who, while confined in a state prison or while being conveyed to or from any state prison or while at any

prison road camp, prison forestry camp, or other prison camps or prison farms or while being conveyed to or from any of those places or while under the custody of prison officials, officers, or employees, possesses or carries upon his or her person or has under his or her custody or control any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, or metal knuckles, any explosive substance, or fixed ammunition, any dirk or dagger or sharp instrument, any pistol, revolver or other firearm, or any tear gas or tear gas weapon, is guilty of a felony and shall be punishable by imprisonment in a state prison for two, three, or four years to be served consecutively.

(b) Every person who, while confined in a state prison or while being conveyed to or from any state prison or while at any prison road camp, prison forestry camp, or other prison camps or prison farms or while being conveyed to or from any of those places or while under the custody of prison officials, officers, or employees, manufactures or attempts to manufacture any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, or metal knuckles, any explosive substance, or fixed ammunition, any dirk or dagger or sharp instrument, any pistol, revolver or other firearm, or any tear gas or tear gas weapon, is guilty of a felony and shall be punishable by imprisonment in a state prison for 16 months, two or three years to be served consecutively.

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

CHAPTER 555

An act to amend Sections 290 and 293 of the Penal Code, relating to sex offenders, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 290 of the Penal Code is amended to read:

290. (a) Any person who, since July 1, 1944, has been or is hereafter convicted in this state of the offense of assault with intent

to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220, or of any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or of any offense defined in Section 264.1, 266, 267, 285, 286, 288, 288a, 288.5, 289, or 647.6 or former Section 647a, subdivision (d) of Section 647, or subdivision 1 or 2 of Section 314, or of any offense involving lewd and lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; or any person who since that date or at any time hereafter is discharged or paroled from a penal institution where he or she was confined because of the commission or attempt to commit one of the above-mentioned offenses; or any person who since that date or at any time hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code; or any person who has been since that date or is hereafter convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall, within 30 days after the effective date of this section or within 14 days of coming into any county, city, or city and county in which he or she temporarily resides or is domiciled for that length of time, register with the chief of police of the city in which he or she is domiciled, or the sheriff of the county if he or she is domiciled in an unincorporated area, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities.

(b) Any person who, after August 1, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where he or she was confined because of the commission or attempt to commit one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement or hospital shall give one copy of the form to the person, and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon

discharge, parole, or release. If the conviction which makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency which prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy. All forms shall, if the conviction which makes the person subject to this section is a felony conviction, be transmitted within those times as to be received by the local law enforcement agency or agencies, and prosecuting agency 30 days prior to the discharge, parole, or release of the person.

(c) Any person who, after August 1, 1950, is convicted in this state of the commission or attempt to commit any of the above-mentioned offenses and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the court in which the person has been convicted and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the following offenses shall be subject to registration under the procedures of this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, paragraph (2) of subdivision (a) of Section 261, or subdivision (a) of Section 289.

(C) Any offense under Section 264.1 involving rape in concert with force or fear of bodily injury or penetration by any foreign object in concert with force or fear of bodily injury.

(2) Any person who is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court

pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(3) Prior to discharge or parole from the Department of the Youth Authority, all persons subject to registration shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25 years.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person required to register attains the age of 25 years or has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code, whichever event occurs first. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case which are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) The registration shall consist of (1) a statement in writing signed by the person, giving information as may be required by the Department of Justice, and (2) the fingerprints and photograph of the person. Within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, and photograph to the Department of Justice.

(f) If any person required to register pursuant to this section changes his or her residence address, the person shall inform, in writing within 10 days, the law enforcement agency or agencies with whom he or she last registered of the new address. The law enforcement agency or agencies shall, within three days after receipt of this information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.

(g) (1) Any person required to register under this section who violates any of its provisions is guilty of a misdemeanor. Any person who has been convicted of assault with intent to commit rape, oral copulation, or sodomy, any violation of Section 264.1, 288, or 289 under Section 220, or any violation of Section 261, 264.1, 286, 288, 288a, 288.5, or 289, and who is required to register under this section who willfully violates any of the provisions of this section is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in a county jail. In no event does the court have the power to absolve a person who willfully violates this

section from the obligation of spending at least 90 days of confinement in a county jail and of completing probation of at least one year.

(2) Any person who has two prior convictions for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison for 16 months, or two or three years.

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

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) The statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This provision shall not apply to any person temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) Every person who, prior to January 1, 1985, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 30 to 14 days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 30 days.

SEC. 1.5. Section 290 of the Penal Code is amended to read:

290. (a) Any person who, since July 1, 1944, has been or is hereafter convicted in this state of the offense of assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220, or of any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or any offense defined in paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison, or of any offense defined in Section 264.1, 266, 267, 285, 286, 288, 288a, 288.5, 289, or 647.6 or former Section 647a, subdivision (d) of Section 647, or subdivision 1 or 2 of Section 314, or of any offense involving lewd and lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; or any person who since that date or at any time hereafter is discharged or paroled from a penal institution where he or she was confined because of the commission or attempt to commit one of the above-mentioned offenses; or any person who since that date or at any time hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code; or any person who has been since that date or is hereafter convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall, within 30 days after the effective date of this section or within 14 days of coming into any county, city, or city and county in which he or she temporarily resides or is domiciled for that length of time, register with the chief of police of the city in which he or she is domiciled, or the sheriff of the county if he or she is domiciled in an unincorporated area, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities.

(b) Any person who, after August 1, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where he or she was confined because of the commission or attempt to commit one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the

Department of Justice. The official in charge of the place of confinement or hospital shall give one copy of the form to the person, and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction which makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency which prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy. All forms shall, if the conviction which makes the person subject to this section is a felony conviction, be transmitted within those times as to be received by the local law enforcement agency or agencies, and prosecuting agency 30 days prior to the discharge, parole, or release of the person.

(c) Any person who, after August 1, 1950, is convicted in this state of the commission or attempt to commit any of the above-mentioned offenses and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the court in which the person has been convicted and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the following offenses shall be subject to registration under the procedures of this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, paragraph (2) of subdivision (a) of Section 261, or subdivision (a) of Section 289.

(C) Any offense under Section 264.1 involving rape in concert

with force or fear of bodily injury or penetration by any foreign object in concert with force or fear of bodily injury.

(2) Any person who is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(3) Prior to discharge or parole from the Department of the Youth Authority, all persons subject to registration shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25 years.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person required to register attains the age of 25 years or has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code, whichever event occurs first. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case which are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) The registration shall consist of (1) a statement in writing signed by the person, giving information as may be required by the Department of Justice, and (2) the fingerprints and photograph of the person. Within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, and photograph to the Department of Justice.

(f) If any person required to register pursuant to this section changes his or her residence address, the person shall inform, in writing within 10 days, the law enforcement agency or agencies with whom he or she last registered of the new address. The law enforcement agency or agencies shall, within three days after receipt of this information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.

(g) (1) Any person required to register under this section who violates any of its provisions is guilty of a misdemeanor. Any person who has been convicted of assault with intent to commit rape, oral copulation, or sodomy under Section 220, any violation of Section 264.1, 288, or 289 under Section 220, any violation of Section 261, any

offense defined in paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison, or any violation of Section 264.1, 286, 288, 288a, 288.5, or 289, and who is required to register under this section who willfully violates any of the provisions of this section is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in a county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in a county jail and of completing probation of at least one year.

(2) Any person who has two prior convictions for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison for 16 months, or two or three years.

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

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) The statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This provision shall not apply to any person temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and

Institutions Code.

(*l*) Every person who, prior to January 1, 1985, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 30 to 14 days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 30 days.

SEC. 2. Section 293 of the Penal Code is amended to read:

293. (a) Any employee of a law enforcement agency who personally receives a report from any person, alleging that the person making the report has been the victim of a sex offense, shall inform that person that his or her name will become a matter of public record unless he or she requests that it not become a matter of public record, pursuant to Section 6254 of the Government Code.

(b) Any written report of an alleged sex offense shall indicate that the alleged victim has been properly informed pursuant to subdivision (a) and shall memorialize his or her response.

(c) No law enforcement agency shall disclose to any person, except the prosecutor or other persons or public agencies where authorized or required by law, the address of a person who alleges to be the victim of a sex offense.

(d) No law enforcement agency shall disclose to any person, except the prosecutor or other persons or public agencies where authorized or required by law, the name of a person who alleges to be the victim of a sex offense, if that person has elected to exercise his or her right pursuant to this section and Section 6254 of the Government Code.

(e) For purposes of this section, sex offense means any crime listed in paragraph (2) of subdivision (f) of Section 6254 of the Government Code which is also defined in Chapter 1 (commencing with Section 261) or Chapter 5 (commencing with Section 281) of Part 1 of Title 9.

SEC. 3. It is the intent of the Legislature in enacting Section 1 of this bill to abrogate the holding in People v. Saunders, 232 Cal. App. 3d 1592.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 187. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 290 of the Penal Code, and (3) this bill is enacted after AB 187, in which case Section 290 of the Penal Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 187, at which time Section 1.5 of this bill shall become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the

definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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

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

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that certain convicted persons are registered as sex offenders in this state at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 556

An act to amend Sections 11353.1, 11353.5, and 11380.1 of the Health and Safety Code, and to amend Section 729.8 of the Welfare and Institutions Code, relating to controlled substances.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 11353.1 of the Health and Safety Code is amended to read:

11353.1. (a) Notwithstanding any other provision of law, any person 18 years of age or over who is convicted of a violation of Section 11353, in addition to the punishment imposed for that conviction, shall receive an additional punishment as follows:

(1) If the offense involved heroin, cocaine, cocaine base, or any analog of these substances and occurred upon the grounds of, or within, a church or synagogue, a playground, a public or private youth center, a child day care facility, or a public swimming pool, during hours in which the facility is open for business, classes, or school-related programs, or at any time when minors are using the facility, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for one year.

(2) If the offense involved heroin, cocaine, cocaine base, or any analog of these substances and occurred upon, or within 1,000 feet of, the grounds of any public or private elementary, vocational, junior high, or high school, during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for two years.

(3) If the offense involved a minor who is at least four years younger than the defendant, the defendant shall, as a full and separately served enhancement to any other enhancement provided in this subdivision, be punished by imprisonment in the state prison for one, two, or three years, at the discretion of the court.

(b) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(c) The additional punishment provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment provided for in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

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

(1) "Playground" means any park or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city, county, or state parks.

(2) "Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

(3) "Video arcade" means any premises where 10 or more video game machines or devices are operated, and where minors are legally permitted to conduct business.

(4) "Video game machine" means any mechanical amusement device, which is characterized by the use of a cathode ray tube display and which, upon the insertion of a coin, slug, or token in any slot or receptacle attached to, or connected to, the machine, may be operated for use as a game, contest, or amusement.

(5) "Within 1,000 feet of the grounds of any public or private elementary, vocational, junior high, or high school" means any public area or business establishment where minors are legally permitted to conduct business which is located within 1,000 feet of any public or

private elementary, vocational, junior high, or high school.

(6) "Child day care facility" has the meaning specified in Section 1596.750.

(f) This section does not require either that notice be posted regarding the proscribed conduct or that the applicable 1,000-foot boundary limit be marked.

SEC. 2. Section 11353.5 of the Health and Safety Code is amended to read:

11353.5. Except as authorized by law, any person 18 years of age or older who unlawfully prepares for sale upon school grounds or a public playground, a child day care facility, a church, or a synagogue, or sells or gives away a controlled substance, other than a controlled substance described in Section 11353 or 11380, to a minor upon the grounds of, or within, any school, child day care facility, public playground, church, or synagogue providing instruction in preschool, kindergarten, or any of grades 1 to 12, inclusive, or providing child care services, during hours in which those facilities are open for classes, school-related programs, or child care, or at any time when minors are using the facility where the offense occurs, or upon the grounds of a public playground during the hours in which school-related programs for minors are being conducted, or at any time when minors are using the facility where the offense occurs, shall be punished by imprisonment in the state prison for five, seven, or nine years. Application of this section shall be limited to persons at least five years older than the minor to whom he or she prepares for sale, sells, or gives away a controlled substance.

SEC. 3. Section 11380.1 of the Health and Safety Code is amended to read:

11380.1. (a) Notwithstanding any other provision of law, any person 18 years of age or over who is convicted of a violation of Section 11380, in addition to the punishment imposed for that conviction, shall receive an additional punishment as follows:

(1) If the offense involved phencyclidine (PCP), methamphetamine, or any analog of these substances and occurred upon the grounds of, or within, a church or synagogue, a playground, a public or private youth center, a child day care facility, or a public swimming pool, during hours in which the facility is open for business, classes, or school-related programs, or at any time when minors are using the facility, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for one year.

(2) If the offense involved phencyclidine (PCP), methamphetamine, or any analog of these substances and occurred upon, or within 1,000 feet of, the grounds of any public or private elementary, vocational, junior high school, or high school, during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs, the defendant shall, as a full and separately served

enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for two years.

(3) If the offense involved a minor who is at least four years younger than the defendant, the defendant shall, as a full and separately served enhancement to any other enhancement provided in this subdivision, be punished by imprisonment in the state prison for one, two, or three years, at the discretion of the court.

(b) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(c) The additional punishment provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment provided for in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(e) The definitions contained in subdivision (e) of Section 11353.1 shall apply to this section.

(f) This section does not require either that notice be posted regarding the proscribed conduct or that the applicable 1,000-foot boundary limit be marked.

SEC. 3.5. Section 11380.1 of the Health and Safety Code is amended to read:

11380.1. (a) Notwithstanding any other provision of law, any person 18 years of age or over who is convicted of a violation of Section 11380, in addition to the punishment imposed for that conviction, shall receive an additional punishment as follows:

(1) If the offense involved phencyclidine (PCP), methamphetamine, lysergic acid diethylamide (LSD), or any analog of these substances and occurred upon the grounds of, or within, a church or synagogue, a playground, a public or private youth center, a child day care facility, or a public swimming pool, during hours in which the facility is open for business, classes, or school-related programs, or at any time when minors are using the facility, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for one year.

(2) If the offense involved phencyclidine (PCP), methamphetamine, lysergic acid diethylamide (LSD), or any analog of these substances and occurred upon, or within 1,000 feet of, the grounds of any public or private elementary, vocational, junior high school, or high school, during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison

for two years.

(3) If the offense involved a minor who is at least four years younger than the defendant, the defendant shall, as a full and separately served enhancement to any other enhancement provided in this subdivision, be punished by imprisonment in the state prison for one, two, or three years, at the discretion of the court.

(b) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(c) The additional punishment provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment provided for in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(e) The definitions contained in subdivision (e) of Section 11353.1 shall apply to this section.

(f) This section does not require either that notice be posted regarding the proscribed conduct or that the applicable 1,000-foot boundary limit be marked.

SEC. 4. Section 729.8 of the Welfare and Institutions Code is amended to read:

729.8. (a) If a minor is found to be a person described in Section 602 by reason of the unlawful possession, use, sale, or other furnishing of a controlled substance, as defined in Chapter 2 (commencing with Section 11053) of the Health and Safety Code, an imitation controlled substance, as defined in Section 11675 of the Health and Safety Code, or toluene or a toxic, as described in Section 381 of the Penal Code, upon the grounds of any school providing instruction in kindergarten, or any of grades 1 to 12, inclusive, or any church or synagogue, playground, public or private youth center, child day care facility, or public swimming pool, during hours in which these facilities are open for business, classes, or school-related activities or programs, or at any time when minors are using the facility, the court, as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, shall require the minor to perform not more than 100 hours of community service.

(b) The definitions contained in subdivision (e) of Section 11353.1 shall apply to this section.

(c) As used in this section, "community service" means any of the following:

(1) Picking up litter along public streets or highways.

(2) Cleaning up graffiti on school grounds or any public property.

(3) Performing services in a drug rehabilitation center.

SEC. 5. Section 3.5 of this bill incorporates amendments to

Section 11380.1 of the Health and Safety Code proposed by both this bill and AB 246. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 11380.1 of the Health and Safety Code, and (3) this bill is enacted after AB 246, in which case Section 3 of this bill shall not become operative.

CHAPTER 557

An act to add Section 186.26 to the Penal Code, relating to criminal street gangs.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 186.26 is added to the Penal Code, to read:

186.26. (a) Any adult who utilizes physical violence to coerce, induce, or solicit another person who is under 18 years of age to actively participate in any criminal street gang, as defined in subdivision (f) of Section 186.22, the members of which engage in a pattern of criminal gang activity, as defined in subdivision (e) of Section 186.22, shall be punished by imprisonment in the state prison for one, two, or three years.

(b) Any adult who threatens a minor with physical violence on two or more separate occasions within any 30-day period with the intent to coerce, induce, or solicit the minor to actively participate in a criminal street gang, as defined in subdivision (f) of Section 186.22, the members of which engage in a pattern of criminal gang activity, as defined in subdivision (e) of Section 186.22, shall be punished by imprisonment in the state prison for one, two, or three years or in a county jail for up to one year.

(c) A minor who is 16 years of age or older who commits an offense described in subdivision (a) or (b) is guilty of a misdemeanor.

(d) Nothing in this section shall be construed to limit prosecution under any other provision of the law.

(e) No person shall be convicted of violating this section based upon speech alone, except upon a showing that the speech itself threatened violence against a specific person, that the defendant had the apparent ability to carry out the threat, and that physical harm was imminently likely to occur.

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

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

CHAPTER 558

An act to add Section 667.72 to the Penal Code, relating to kidnapping.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 667.72 is added to the Penal Code, to read:

667.72. (a) For the purpose of this section, a habitual child molester is a person who has previously served at least one prison term for a violation of subdivision (c) of Section 286, subdivision (b) of Section 288, or subdivision (c) of Section 288a who, for the purpose of committing that sexual offense, kidnapped the victim, who was under the age of 14 at the time of the offense, in violation of Section 207, and is convicted in the present proceeding of the same offense against at least two separate victims.

(b) Except as specified in subdivision (c), a habitual child molester shall be punished by 25 years in the state prison. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce the prison term imposed by this subdivision. However, no habitual child molester sentenced under this subdivision may be released on parole until he or she has been incarcerated for at least 20 years.

(c) At the request of the prosecutor and in lieu of the punishment specified in subdivision (b), the court shall instead order the defendant be punished according to Sections 1170.1 and 667.6, or according to Section 667.7 or 667.71, if applicable.

(d) For the purpose of this section, prosecutorial jurisdiction is authorized in any county wherein at least one of the underlying offenses occurred.

(e) This section shall only apply if the defendant's status as a habitual child molester is alleged in the information, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by court sitting without a jury.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district

will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 559

An act to amend Section 313.1 of the Penal Code, relating to video recordings.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 313.1 of the Penal Code is amended to read:

313.1. (a) Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly sells, rents, distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including, but not limited to, live or recorded telephone messages, any harmful matter to the minor shall be punished as specified in Section 313.4.

It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or perform related activities in providing telephone services.

(b) Every person who misrepresents himself or herself to be the parent or guardian of a minor and thereby causes the minor to be admitted to an exhibition of any harmful matter shall be punished as specified in Section 313.4.

(c) Any person who knowingly displays, sells, or offers to sell in any coin- or slug-operated vending machine or mechanically or electronically controlled vending machine which is located in a public place, other than a public place from which minors are excluded, any harmful matter displaying to the public view photographs or pictorial representations of the commission of any of the following acts shall be punished as specified in Section 313.4: sodomy, oral copulation, sexual intercourse, masturbation, bestiality, or a photograph of an exposed penis in an erect and turgid state.

(d) Nothing in this section invalidates or prohibits the adoption of an ordinance by a city, county, or city and county which restricts the display of material which is harmful to minors, as defined in this chapter, in a public place, other than a public place from which minors are excluded, by requiring the placement of devices

commonly known as blinder racks in front of the material, so that the lower two-thirds of the material is not exposed to view.

(e) Any person who sells or rents video recordings of harmful matter shall create an area within his or her business establishment for the placement of video recordings of harmful matter and for any material which advertises the sale or rental of these video recordings. This area shall be labeled "adults only." The failure to create and label the area is an infraction, and is punishable by a fine not to exceed one hundred dollars ($100). The failure to place a video recording or advertisement, regardless of its content, in this area shall not constitute an infraction. Any person who sells or distributes video recordings of harmful matter to others for resale purposes shall inform the purchaser of the requirements of this section. This subdivision shall not apply to public libraries as defined in Section 18710 of the Education Code.

(f) Any person who rents a video recording and alters the video recording by adding harmful material, and who then returns the video recording to a video rental store, shall be guilty of a misdemeanor. It shall be a defense in any prosecution for a violation of this subdivision that the video rental store failed to post a sign, reasonably visible to all customers, delineating the provisions of this subdivision.

(g) It shall be a defense in any prosecution for a violation of subdivision (a) by a person who knowingly distributed any harmful matter by the use of telephones or telephone facilities to any person under the age of 18 years that the defendant has taken either of the following measures to restrict access to the harmful matter by persons under 18 years of age:

(1) Required the person receiving the harmful matter to use an authorized access or identification code, as provided by the information provider, before transmission of the harmful matter begins, where the defendant has previously issued the code by mailing it to the applicant after taking reasonable measures to ascertain that the applicant was 18 years of age or older and has established a procedure to immediately cancel the code of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of 18 years or that the code is no longer desired.

(2) Required payment by credit card before transmission of the matter.

(h) Any list of applicants or recipients compiled or maintained by an information-access service provider for purposes of compliance with paragraph (1) of subdivision (g) is confidential and shall not be sold or otherwise disseminated except upon order of the court.

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

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

CHAPTER 560

An act to amend Sections 1764.2, 1767, and 1767.1 of, and to repeal Sections 1767.8 and 1767.9 of, the Welfare and Institutions Code, relating to youth.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 1764.2 of the Welfare and Institutions Code is amended to read:

1764.2. (a) Notwithstanding any other provision of law, the director or the director's designee shall release the information described in Section 1764 regarding a person committed to the Youth Authority for an offense described in subdivision (a) of Section 676, to the victim of the offense, the next of kin of the victim, or his or her representative as designated by the victim or next of kin pursuant to Section 1767, upon request, unless the court has ordered confidentiality under subdivision (c) of Section 676. The victim or the next of kin shall be identified by the court or the probation department in the offender's commitment documents before the director is required to disclose this information.

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

SEC. 2. Section 1767 of the Welfare and Institutions Code is amended to read:

1767. (a) Upon request, written notice of any hearing to consider the release on parole of any person under the control of the Youth Authority for the commission of a crime or committed to the authority as a person described in Section 602 shall be sent by the Youthful Offender Parole Board at least 30 days before the hearing to any victim of a crime committed by the person, or to the next of kin of the victim if the victim has died or is a minor. The requesting

party shall keep the board apprised of his or her current mailing address.

(b) Any one of the following persons may appear, personally or by counsel, at the hearing:

(1) The victim or his or her representative as designated by the victim.

(2) The victim's next of kin or his or her representative as designated by the next of kin.

If none of those persons appear personally at the hearing, any one of them may submit a statement recorded on videotape for the board's consideration at the hearing. Those persons shall also have the right to submit a written statement to the board at least 10 days prior to the scheduled hearing for the board's consideration at the hearing.

(c) The board, in deciding whether to release the person on parole, shall consider the statements of victims, next of kin, or statements made on their behalf pursuant to this section and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole. The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

(d) A representative designated by the victim or the victim's next of kin shall be either that person's legal counsel or a family or household member of the victim, for the purposes of this section.

SEC. 3. Section 1767.1 of the Welfare and Institutions Code is amended to read:

1767.1. At least 30 days before the Youthful Offender Parole Board meets to review or consider the parole of any person who has been committed to the control of the Department of the Youth Authority for the commission of any offense described in subdivision (b) of Section 707, or for the commission of an offense in violation of paragraph (3) of subdivision (a) of Section 261 of the Penal Code, the board shall send written notice of the hearing to each of the following persons: the judge of the court which committed the person to the authority, the attorney for the person, the district attorney of the county from which the person was committed, and the law enforcement agency that investigated the case.

Each of the persons so notified shall have the right to submit a written statement to the board at least 10 days prior to the scheduled hearing for the board's consideration at the hearing. Nothing in this subdivision shall be construed to permit any person so notified to attend the hearing. With respect to the parole of any person over the age of 18 years, the presiding officer shall state findings and supporting reasons for the decision of the board at the hearing. The findings and reasons shall be reduced to writing, and shall be made available for inspection by members of the public no later than 30 days from the date of the hearing.

SEC. 4. Section 1767.8 of the Welfare and Institutions Code is repealed.

SEC. 5. Section 1767.9 of the Welfare and Institutions Code is repealed.

CHAPTER 561

An act to add Section 49076.5 to the Education Code, relating to pupils.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 49076.5 is added to the Education Code, to read:

49076.5. (a) Notwithstanding Section 49076, each school district shall release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information.

(b) In order to protect the privacy interests of the pupil, a request to a school district for pupil record information pursuant to this section shall meet the following requirements:

(1) For the purposes of this section "proper police purpose" means that probable cause exists that the pupil has been kidnapped and that his or her abductor may have enrolled the pupil in a school and that the agency has begun an active investigation.

(2) Only designated peace officers and federal criminal investigators and federal law enforcement officers, as defined in Section 830.1 of the Penal Code, whose names have been submitted to the school district in writing by a law enforcement agency, may request and receive the information specified in subdivision (a). Each law enforcement agency shall ensure that each school district has at all times a current list of the names of designated peace officers authorized to request pupil record information.

(3) This section does not authorize designated peace officers to obtain any pupil record information other than that authorized by this section.

(4) The law enforcement agency requesting the information shall ensure that at no time shall any information obtained pursuant to this section be disclosed or used for any purpose other than to assist in the investigation of suspected criminal conduct of kidnapping. A violation of this paragraph shall be punishable as a misdemeanor.

(5) The designated peace officer requesting information

authorized for release by this section shall make a record on a form created and maintained by the law enforcement agency which shall include the name of the pupil about whom the inquiry was made, the consent of a parent having legal custody of the pupil or a legal guardian, the name of the officer making the inquiry, the date of the inquiry, the name of the school district, the school district employee to whom the request was made, and the information that was requested.

(6) Whenever the designated peace officer requesting information authorized for release by this section does so in person, by telephone, or by some means other than in writing, the officer shall provide the school district with a letter confirming the request for pupil record information prior to any release of information.

(7) No school district, or official or employee thereof, shall be subject to criminal or civil liability for the release of pupil record information in good faith as authorized by this section.

SEC. 2. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law. Pursuant to Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the July 1 following the date on which the act takes effect pursuant to the California Constitution.

CHAPTER 562

An act to add Section 11366.8 to the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 11366.8 is added to the Health and Safety Code, to read:

11366.8. (a) Every person who possesses, uses, or controls a false compartment with the intent to store, conceal, smuggle, or transport a controlled substance within the false compartment shall be punished by imprisonment in a county jail for a term of imprisonment not to exceed one year or in the state prison.

(b) Every person who designs, constructs, builds, alters, or fabricates a false compartment for, or installs or attaches a false compartment to, a vehicle with the intent to store, conceal, smuggle,

or transport a controlled substance shall be punished by imprisonment in the state prison for 16 months or two or three years.

(c) The term "vehicle" means any of the following vehicles without regard to whether the vehicles are private or commercial, including, but not limited to, cars, trucks, busses, aircraft, boats, ships, yachts, and vessels.

(d) The term "false compartment" means any box, container, space, or enclosure that is intended for use or designed for use to conceal, hide, or otherwise prevent discovery of any controlled substance within or attached to a vehicle, including, but not limited to, any of the following:

(1) False, altered, or modified fuel tanks.

(2) Original factory equipment of a vehicle that is modified, altered, or changed.

(3) Compartment, space, or box that is added to, or fabricated, made, or created from, existing compartments, spaces, or boxes within a vehicle.

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

CHAPTER 563

An act to amend Section 40422 of, and to add and repeal Section 40927 of, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 40422 of the Health and Safety Code is amended to read:

40422. (a) The term of each member of the south coast district board shall be four years and until his or her successor is appointed. Upon the expiration of his or her term, a member who is a mayor from the County of Orange or a member of a city council from the County of Orange may be reappointed, in accordance with subdivision (f) of Section 40420, within 60 days, and the office shall become vacant if the member is not so reappointed within 60 days. Any vacancy on the south coast district board shall be filled within

60 days of its occurrence by its appointing authority.

(b) The members first appointed to the board shall classify themselves by lot so that the terms of four members expire January 15, 1990, the terms of four members expire January 15, 1991, and the terms of three members expire January 15, 1992.

(c) Notwithstanding subdivision (a), no member of a board of supervisors, mayor, or member of a city council shall hold office on the south coast district board for more than 60 days after ceasing to be supervisor, mayor, or member of the city council, respectively, and the membership on the board held by that person terminates upon the expiration of that 60-day period. However, any mayor who immediately resumes the office of member of the city council, and any member of a city council who becomes mayor, has not ceased to hold office for the purposes of this subdivision.

(d) Any member who does not attend three consecutive meetings of the south coast district board without good and sufficient cause therefor, shall be removed by the appointing authority. Any member who does not attend three consecutive meetings of the south coast district board, without good and sufficient cause therefor, and is not thereupon removed by the appointing authority, may be removed by the affirmative vote of at least eight members of the south coast district board.

SEC. 2. Section 40927 is added to the Health and Safety Code, to read:

40927. (a) The Legislature hereby finds and declares all of the following:

(1) In most nonattainment regions of the state, well over half of the air pollution is created from vehicular sources, including excessive amounts of vehicle trips.

(2) Nonetheless, the current economic circumstances in the state make it difficult and costly for small-business employers which employ less than one hundred employees to comply with employer-based trip reduction requirements proposed to be adopted in some regions of the state.

(3) It is the intent of the Legislature that, except as provided in subdivision (b), districts continue to adopt all feasible and cost-effective strategies, which do not displace jobs or businesses, to reduce vehicle trips to meet state and federal ambient air standards by the earliest practicable date.

(b) A district shall not require any employer with fewer than 100 employees at a single worksite to implement a trip reduction program or to submit a trip reduction plan.

(c) This section does not apply to a district which meets all of the following criteria:

(1) The district board, as of January 1, 1993, consisted solely of a county board of supervisors.

(2) The district has, prior to January 1, 1994, adopted a nonattainment plan which includes a proposed employer-based trip reduction rule or regulation which affects employers of fewer than

one hundred employees at a single worksite.

(3) The district has made specific findings at a public hearing that the trip reduction rule or regulation is essential to ensure effective implementation of transportation control measures to improve air quality, and that failure to adopt the rule or regulation would result in a 50-percent, or greater, loss in the district's potential to reduce vehicle trips under its adopted nonattainment plan.

(4) The district adopted its rule or regulation on or before January 1, 1994.

(5) The district nonattainment plan has been approved by the state board.

(d) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

CHAPTER 564

An act to amend Sections 4060, 5604, 5604.2, 5734, 5771.3, 5771.5, and 5772 of, and to amend and repeal Section 5771 of, the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 4060 of the Welfare and Institutions Code is amended to read:

4060. The department shall, in order to implement Section 4050, utilize a joint state-county decisionmaking process that shall include local mental health directors and representatives of local mental health boards. The purpose of this collaboration shall be to promote effective and efficient quality mental health services to the residents of the state under the realigned mental health system.

SEC. 2. Section 5604 of the Welfare and Institutions Code is amended to read:

5604. (a) Each community mental health service shall have a mental health board consisting of 10 to 15 members, depending on the preference of the county, appointed by the governing body except that boards in counties with a population of less than 80,000 may have a minimum of five members. One member of the board shall be a member of the local governing body. There shall be an equal number of appointees by each member of the board of supervisors. Any county with more than five supervisors shall have at least the same number of members as the size of its board of supervisors. Nothing in this section shall be construed to limit the ability of the governing body to increase the number of members above 15. Local mental health boards may recommend appointees to

the county supervisors. Counties are encouraged to appoint individuals who have experience and knowledge of the mental health system. The board membership should reflect the ethnic diversity of the client population in the county.

(1) Fifty percent of the board membership shall be consumers or the parents, spouses, siblings, or adult children of consumers, who are receiving or have received mental health services. At least 20 percent of the total membership shall be consumers, and at least 20 percent shall be families of consumers.

(2) In counties under 80,000 population, at least one member shall be a consumer, and at least one member shall be a parent, spouse, sibling, or adult child of a consumer, who is receiving or has received mental health services.

(b) The term of each member of the board shall be for three years. The governing body shall equitably stagger the appointments so that approximately one-third of the appointments expire in each year.

(c) If two or more local agencies jointly establish a community mental health service under Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the mental health board for the community mental health service shall consist of an additional two members for each additional agency, one of whom shall be a consumer or a parent, spouse, sibling, or adult child of a consumer who has received mental health services.

(d) No member of the board or his or her spouse shall be a full-time or part-time county employee of a county mental health service, an employee of the State Department of Mental Health, or an employee of, or a paid member of the governing body of, a Bronzan-McCorquodale contract agency.

(e) Members of the board shall abstain from voting on any issue in which the member has a financial interest as defined in Section 87103 of the Government Code.

(f) If it is not possible to secure membership as specified from among persons who reside in the county, the governing body may substitute representatives of the public interest in mental health who are not full-time or part-time employees of the county mental health service, the State Department of Mental Health, or on the staff of, or a paid member of the governing body of, a Bronzan-McCorquodale contract agency.

(g) The mental health board may be established as an advisory board or a commission, depending on the preference of the county.

SEC. 3. Section 5604.2 of the Welfare and Institutions Code is amended to read:

5604.2. (a) The local mental health board shall do all of the following:

(1) Review and evaluate the community's mental health needs, services, facilities, and special problems.

(2) Review any county agreements entered into pursuant to Section 5650.

(3) Advise the governing body and the local mental health director as to any aspect of the local mental health program.

(4) Review and approve the procedures used to ensure citizen and professional involvement at all stages of the planning process.

(5) Submit an annual report to the governing body on the needs and performance of the county's mental health system.

(6) Review and make recommendations on applicants for the appointment of a local director of mental health services. The board shall be included in the selection process prior to the vote of the governing body.

(7) Review and comment on the county's performance outcome data and communicate its findings to the California Mental Health Planning Council.

(8) Nothing in this part shall be construed to limit the ability of the governing body to transfer additional duties or authority to a mental health board.

(b) It is the intent of the Legislature that, as part of its duties pursuant to subdivision (a), the board shall assess the impact of the realignment of services from the state to the county, on services delivered to clients and on the local community.

SEC. 4. Section 5734 of the Welfare and Institutions Code is amended to read:

5734. (a) The State Department of Mental Health shall, to the extent resources are available, review the recommendations contained in the Mental Health Master Plan, as submitted by the California Mental Health Planning Council on October 1, 1991.

(b) By March 1, 1993, the State Department of Mental Health shall submit, to the appropriate committees of the Legislature, its findings as to which recommendations are programmatically and fiscally desirable and feasible, with suggested timelines for adoption.

SEC. 5. Section 5771 of the Welfare and Institutions Code is amended to read:

5771. (a) Pursuant to Public Law 102-321, there is the California Mental Health Planning Council. The purpose of the planning council shall be to fulfill those mental health planning requirements mandated by federal law.

(b) (1) The planning council shall have 40 members, to be comprised of members appointed from both the local and state levels in order to ensure a balance of state and local concerns relative to planning.

(2) As required by federal law, eight members of the planning council shall represent various state departments.

(3) Members of the planning council shall be appointed in such a manner as to ensure that at least one-half are persons with mental disabilities, family members of persons with mental disabilities, and representatives of organizations advocating on behalf of persons with mental disabilities. Persons with mental disabilities and family members shall be represented in equal numbers.

(4) The Director of Mental Health shall make appointments from

nominees from mental health constituency organizations, which shall include representatives of consumer-related advocacy organizations, representatives of mental health professional and provider organizations, and one representative of the California Coalition on Mental Health.

(c) Members should be balanced according to demography, geography, gender, and ethnicity. Members should include representatives with interest in all target populations, including, but not limited to, children and youth, adults, and older adults.

(d) The planning council shall annually elect a chairperson and a vice chairperson.

(e) The term of each member shall be three years, to be staggered so that approximately one-third of the appointments expire in each year.

(f) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 6. Section 5771.3 of the Welfare and Institutions Code is amended to read:

5771.3. (a) The California Mental Health Planning Council may utilize staff of the State Department of Mental Health, to the extent they are available, and the staff of any other public or private agencies that have an interest in the mental health of the public and that are able and willing to provide those services.

(b) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 7. Section 5771.5 of the Welfare and Institutions Code is amended to read:

5771.5. (a) (1) The chairperson of the California Mental Health Planning Council, with the concurrence of a majority of the members of the California Mental Health Planning Council, shall appoint an executive officer who shall have those powers delegated to him or her by the council in accordance with this chapter.

(2) The executive officer shall be exempt from civil service.

(b) Within the limit of funds allotted for these purposes, the California Mental Health Planning Council may appoint other staff it may require according to the rules and procedures of the civil service system.

(c) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 8. Section 5772 of the Welfare and Institutions Code is amended to read:

5772. The California Mental Health Planning Council shall have the powers and authority necessary to carry out the duties imposed upon it by this chapter, including, but not limited to, the following:

(a) To advocate for effective, quality mental health programs.

(b) To review, assess, and make recommendations regarding all

components of California's mental health system, and to report as necessary to the Legislature, the State Department of Mental Health, local boards, and local programs.

(c) To review program performance in delivering mental health services by annually reviewing performance outcome data as follows:

(1) To review and approve the performance outcome measures.

(2) To review the performance of mental health programs based on performance outcome data and other reports from the State Department of Mental Health and other sources.

(3) To report findings and recommendations on programs' performance annually to the Legislature, the State Department of Mental Health, and the local boards.

(4) To identify successful programs for recommendation and for consideration of replication in other areas. As data and technology are available, identify programs experiencing difficulties.

(d) When appropriate, make a finding pursuant to Section 5655 that a county's performance is failing in a substantive manner. The State Department of Mental Health shall investigate and review the finding, and report the action taken to the Legislature.

(e) To advise the Legislature, the State Department of Mental Health, and county boards on mental health issues and the policies and priorities that this state should be pursuing in developing its mental health system.

(f) To periodically review the state's data systems and paperwork requirements to ensure that they are reasonable and in compliance with state and federal law.

(g) To make recommendations to the State Department of Mental Health on the award of grants to county programs to reward and stimulate innovation in providing mental health services.

(h) To conduct public hearings on the state mental health plan, the Substance Abuse and Mental Health Services Administration block grant, and other topics, as needed.

(i) To participate in the recruitment of candidates for the position of Director of Mental Health, and provide advice on the final selection.

(j) In conjunction with other statewide and local mental health organizations, assist in the coordination of training and information to local mental health boards as needed to ensure that they can effectively carry out their duties.

(k) To advise the Director of Mental Health on the development of the state mental health plan and the system of priorities contained in that plan.

(*l*) To assess the effect of realignment of mental health services from the state to the counties on the delivery of those services, and report its findings to the Legislature, the State Department of Mental Health, local programs, and local boards no later than January 1, 1995.

(m) To suggest rules, regulations, and standards for the administration of this division.

(n) When requested, to mediate disputes between counties and the state arising under this part.

(o) To employ administrative, technical, and other personnel necessary for the performance of its powers and duties, subject to the approval of the Department of Finance.

(p) To accept any federal fund granted, by act of Congress or by executive order, for purposes within the purview of the California Mental Health Planning Council, subject to the approval of the Department of Finance.

(q) To accept any gift, donation, bequest, or grants of funds from private and public agencies for all or any of the purposes within the purview of the California Mental Health Planning Council, subject to the approval of the Department of Finance.

(r) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

CHAPTER 565

An act to add Article 5.5 (commencing with Section 26661) to Chapter 2 of Part 3 of Division 12 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. The Legislature declares its concern for the quality of poultry offered for sale to consumers within California and for the health, safety and welfare of consumers of poultry. It is a fact that poultry whose internal temperature is equal to 25 degrees Fahrenheit or below becomes solidified to an extent that the ordinary consumer would consider it to have been frozen. It is also a fact that poultry that has reached such internal temperatures, or that has been stored at such temperatures, often is advertised and labeled as "fresh." Poultry that has reached such internal temperatures suffers degradation and a substantial loss of quality when it is thawed in the ordinary course of retail sale. It is the intent of the Legislature to protect consumers from misleading claims that poultry is "fresh" if, in fact, the poultry's internal temperature ever has been 25 degrees or below or if the poultry has been stored in the aggregate for 24 hours or more at average ambient temperatures equal to or below 25 degrees.

SEC. 2. Article 5.5 (commencing with Section 26661) is added to Chapter 2 of Part 3 of Division 12 of the Food and Agricultural Code, to read:

Article 5.5. Fresh Poultry

26661. No person who processes, butchers, slaughters, packs, repacks, or sells poultry or poultry meat for wholesale distribution or sale, or who engages in the business of buying, selling, or reselling poultry or poultry meat on commission for wholesale distribution or sale shall advertise, label, describe, otherwise hold out, or sell as "fresh" any poultry or poultry meat whose internal temperature ever has been equal to or below 25 degrees Fahrenheit or that ever has been stored in the aggregate for 24 hours or more at an average ambient temperature of 25 degrees Fahrenheit or below.

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

CHAPTER 566

An act to add and repeal Section 33681.3 of the Health and Safety Code, relating to redevelopment, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 33681.3 is added to the Health and Safety Code, to read:

33681.3. (a) For any agency that, pursuant to Section 33401 or 33676, paid or allocated to the county in the 1990–91 fiscal year 33 percent or more of the total amount of property taxes apportioned to the agency pursuant to Section 33670, the Director of Finance shall, within 10 days of the effective date of the act that adds this section, recalculate the amount required to be remitted by the agency to the county auditor, pursuant to subdivision (a) of Section 33681, for deposit in the Educational Revenue Augmentation Fund created pursuant to Section 97.03 of the Revenue and Taxation Code.

(b) The Director of Finance shall do all of the following:

(1) Determine the total amount of property taxes paid or allocated to the requesting agency pursuant to Section 33670, including any amounts paid or allocated to affected taxing agencies

pursuant to Section 33401 and 33676.

(2) Determine the total amount of property taxes that remain with the agency after the agency has appropriated property taxes to the county pursuant to Section 33401 or 33676.

(3) Determine the percentage factor of property taxes that remain with the agency after the agency has appropriated property taxes to the county pursuant to Section 33401 or 33676.

(4) Determine a new amount for the agency by multiplying the amount determined pursuant to subdivision (a) of Section 33681 by the percentage factor determined pursuant to paragraph (3) if that percentage is less than 67.

(5) Determine an amount for the county by subtracting the amount determined pursuant to paragraph (4) from the amount determined pursuant to subdivision (a) of Section 33681.

(6) Notify each agency, each legislative body, and each affected county of the respective amounts determined pursuant to paragraphs (4) and (5).

(7) Notify each county auditor of the amounts determined pursuant to paragraphs (4) and (5) for each agency and the county in his or her county.

(c) For the 1992–93 fiscal year, a county shall allocate, within 30 days of the effective date of the act that adds this section, to the county auditor for deposit in the Educational Revenue Augmentation Fund created pursuant to Section 97.03 of the Revenue and Taxation Code, an amount equal to the amount determined pursuant to paragraph (5) of subdivision (b). This allocation shall be in addition to any other allocation required by statute, including but not limited to allocations required pursuant to Section 97.03 of the Revenue and Taxation Code.

(d) (1) For the purpose of making the determinations required by subdivision (b), the Director of Finance shall use the amounts reported in the Controller's Annual Report on Financial Transactions Concerning Community Redevelopment Agencies for the 1990-91 fiscal year. In the event that revised reports have been accepted by the Controller, the Director of Finance shall use appropriate data that has been certified by the Controller.

(2) For the purposes of making the determination that an agency qualifies pursuant to subdivision (a) and of making the determinations required by subdivision (b), the Director of Finance shall use the total property tax amounts for the agencies involved, rather than the amounts of individual project area agreements.

(e) The Director of Finance shall transfer from the Educational Revenue Augmentation Fund to an agency any amount that he or she determines to be owed from the fund to that agency pursuant to the requirements of subdivision (b).

(f) This section shall be operative only until July 1, 2003. This section shall remain in effect only until January 1, 2004, and as of that date is repealed.

SEC. 2. No reimbursement shall be made from the State

Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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

In order to effectuate an equitable adjustment in the allocations made by redevelopment agencies to the Educational Revenue Augmentation Fund for the 1992–93 fiscal year as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 567

An act to add Article 6 (commencing with Section 92160) to Chapter 2 of Part 57 of the Education Code, relating to postsecondary education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Article 6 (commencing with Section 92160) is added to Chapter 2 of Part 57 of the Education Code, to read:

Article 6. Construction of a San Joaquin Valley Campus

92160. The Legislature finds and declares all of the following:

(a) The San Joaquin Valley is the most populous region of the state without a University of California campus, and has one of the lowest rates of college participation of all regions in California. The San Joaquin Valley consists of the following counties: Alpine, Amador, Calaveras, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, San Joaquin, Stanislaus, Tulare, and Tuolumne.

(b) The San Joaquin Valley sends fewer than 5 percent of its high school graduates to the University of California, a smaller proportion than the statewide average of almost 8 percent of high school graduates who attend the university.

(c) Access to postsecondary education is determined, in

significant measure, by a student's proximity to college campuses.

(d) California's economic, social, and cultural development depends upon popular access to an educational system that prepares all of the state's inhabitants for responsible citizenship and meaningful careers in a multicultural democracy.

(e) The southern San Joaquin Valley is home to a large population of Chicano and Latino Californians, a group that has been historically underrepresented among the University of California student body.

(f) Current projections indicate that California must prepare to accommodate more than 700,000 additional students in its public postsecondary educational institutions within the next 12 years.

(g) In 1988, the Regents of the University of California adopted a long-range enrollment plan to expand the capacity of the university to accommodate an estimated 65,000 additional students by 2005.

(h) California has suffered a severe fiscal crisis that resulted in the underfunding of the University of California and the regents suspending actions and plans to construct additional campuses.

(i) The Legislature recognizes that long-term planning for California's future higher education needs must continue despite the short-term scarcity of resources.

(j) The Legislature is committed to planning for expansion of its higher education system, with particular emphasis on quality undergraduate education, student and faculty diversity, improved transfer and retention programs, and effective accountability mechanisms.

(k) As evidenced by the adoption of House Resolution 24 and Senate Resolution 18, the Legislature is committed to providing financial support to the University of California for the purpose of meeting the increased need for higher education created by growth in the state's population.

SEC. 2. The sum of one million five hundred thousand dollars ($1,500,000) is appropriated from the June 1990 Higher Education Capital Outlay Bond Fund created by Section 67346 of the Education Code to the University of California for the purpose of preparing environmental studies and environmental impact reports related to the selection of a site for a new campus of the University of California in the Central Valley region of California.

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

In order to reinstate as quickly as possible the actions and plans to construct additional campuses suspended by the Regents of the University of California, it is necessary for this act to take effect immediately.

CHAPTER 568

An act to add Section 6358.2 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 6358.2 is added to the Revenue and Taxation Code, to read:

6358.2. There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of wood shavings, sawdust, rice hulls, or other products that are used as litter in poultry and egg production and that are ultimately resold or incorporated into fertilizer products.

SEC. 2. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 569

An act to amend Section 37672 of the Education Code, relating to school funding.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 37672 of the Education Code is amended to read:

37672. (a) No pupil participating in programs as described in Section 37670 shall be credited with more than one day of attendance in any calendar day, except as permitted in Section 46140.

Average daily attendance generated in the regular elementary, junior high, and high schools operated under Section 37670 shall be calculated as prescribed in subdivision (a) of Section 41601.

(b) Notwithstanding Section 37640, subdivision (a) of Section 41601, and any other provision of law, the number of days taught in

one or more late entry makeup classes in which a pupil in a program of year-round scheduling is enrolled shall be disregarded, at the option of a school district, in calculating the number of days taught in the calculation of average daily attendance of that district for any school year, if the pupil entered the program of year-round scheduling after September 1 of that school year and the track in which the pupil is enrolled began instruction in July or August of that school year. For purposes of this subdivision, "late entry makeup class" is a class in which a pupil in a program of year-round scheduling is enrolled in order to compensate for the pupil's late enrollment in that program. The number of days taught that are disregarded under this subdivision shall not exceed the number of schooldays occurring in the school year prior to September 1 in the track in which the pupil is enrolled, reduced by the number of schooldays, if any, occurring in a program operating under the traditional school calendar in which the pupil was enrolled in that school district in the same school year prior to the date upon which the pupil is first enrolled in the program of year-round scheduling.

CHAPTER 570

An act to amend Section 1391 of, and to add Section 1308.7 to, the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 1308.7 is added to the Labor Code, to read:

1308.7. (a) No minor shall be employed in the entertainment industry more than eight hours in one day of 24 hours, or more than 48 hours in one week, or before 5 a.m., or after 10 p.m. on any day preceding a schoolday. However, a minor may work the hours authorized by this section during any evening preceding a nonschoolday until 12:30 a.m. of the nonschoolday.

(b) For purposes of this section, "schoolday" means any day in which a minor is required to attend school for 240 minutes or more.

(c) Any person or the agent or officer thereof, or any parent or guardian, who directly or indirectly violates or causes or suffers the violation of this section, is guilty of a misdemeanor punishable by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), or imprisonment in the county jail for not more than 60 days, or both.

SEC. 2. Section 1391 of the Labor Code is amended to read:

1391. (a) Except as provided in Sections 1297 and 1308.7:

(1) No minor 15 years of age or younger shall be employed more

than eight hours in one day of 24 hours, or more than 40 hours in one week, or before 7 a.m. or after 7 p.m., except that from June 1 through Labor Day, a minor 15 years of age or younger may work the hours authorized by this section until 9 p.m. in the evening.

(2) No minor 16 or 17 years of age shall be employed more than eight hours in one day of 24 hours or more than 48 hours in one week, or before 5 a.m., or after 10 p.m. on any day preceding a schoolday. However, a minor 16 or 17 years of age may work the hours authorized by this section during any evening preceding a nonschoolday until 12:30 a.m. of the nonschoolday.

(b) For purposes of this section, "schoolday" means any day in which a minor is required to attend school for 240 minutes or more.

(c) Any person or the agent or officer thereof, or any parent or guardian, who directly or indirectly violates or causes or suffers the violation of this section is guilty of a misdemeanor punishable by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), or imprisonment in the county jail for not more than 60 days or both.

(d) Nothing in this section shall apply to any minor employed to deliver newspapers to consumers.

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

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

In order to preserve the safety and welfare of children in the entertainment industry, it is necessary that this act take effect immediately.

CHAPTER 571

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

[Approved by Governor September 28, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. The Legislature finds and declares that this act is necessary to fund the Hope in Youth Campaign, in accordance with the veto message of the Governor for Item 8100-490 of the Budget Act of 1993 (Chapter 55, Statutes 1993).

SEC. 2. The sum of one million six hundred thousand dollars ($1,600,000) is hereby appropriated from the General Fund to the Los Angeles Area Hope in Youth Campaign to be used to assist in the development of alternatives to gangs for youth. These funds shall be expended in conformity with the four hundred thousand dollar ($400,000) anti-drug abuse grant award agreement developed by the Office of Criminal Justice Planning. An amount not to exceed 5 percent of the total funds appropriated by this act shall be set aside for the purposes of program monitoring, evaluation, and administration to be performed by the Office of Criminal Justice Planning. The Office of Criminal Justice Planning shall evaluate the program and provide the appropriate policy and fiscal committees of the Legislature a report on or before May 1, 1994. It is the intent of the Legislature that this evaluation provide an accurate means to assess the program effectiveness of this pilot project with regard to possible future funding.

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

In order to develop innovative solutions to support and encourage alternatives to gangs for our youth and to ensure the safety of the citizens of this state by providing adequate funding for the Los Angeles Area Hope in Youth Campaign for the 1993–94 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 572

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

[Approved by Governor September 28, 1993. Filed with Secretary of State September 28, 1993.]

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

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

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

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

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

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

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

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

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

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

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

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

(10) "Low-income number" means a hospital's low-income

utilization rate rounded down to the nearest whole number, and included on a disproportionate share list.

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

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

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

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

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

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

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

(b) For each fiscal year commencing with 1991–92, there shall be Medi-Cal payment adjustment amounts paid to hospitals pursuant to this section. The amount of payments made and the eligible hospitals for each payment adjustment year shall be determined in accordance with the provisions of this section. The payments are intended to support health care services rendered by disproportionate share hospitals.

(c) For each fiscal year commencing with 1991–92, the department shall issue a disproportionate share list. The list shall be developed in accordance with subdivisions (e) and (f), and shall serve as a basis for payments under this section for the particular payment adjustment year. In developing the list, the department may, to the extent practicable, utilize applicable data which is consistent with analysis compiled or developed by the California Medical Assistance Commission.

(d) (1) Except as otherwise provided by this section, the

payment adjustment amounts under this section shall be distributed as a supplement to, and concurrent with, payments on all billings for Medi-Cal acute inpatient hospital services that are paid through Medi-Cal claims payment systems on or after July 1, 1991. In connection with those billings, the department shall pay payment adjustment amounts in accordance with subdivision (g), (h), (i), or (j), as applicable, to any hospital qualifying under subdivision (e). In addition, the department shall pay to each of those hospitals any supplemental lump-sum payment adjustment amount payable under subdivision (u). The nonfederal share of all payment adjustment amounts shall be funded by amounts from the fund. The department shall obtain federal matching funds for the payment adjustment program through customary Medi-Cal accounting procedures.

(2) As a limitation to paragraph (1), all payment adjustment amounts under this section, which are due with respect to billings paid through Medi-Cal claims payment systems on or after July 1, 1991, shall be suspended until the time federal approval is first obtained for the payment adjustment program as part of the Medi-Cal program. For purposes of this paragraph, federal approval requires both (i) approval by appropriate federal agencies of an amendment to the Medi-Cal State Plan, as referred to in subdivision (o), and (ii) confirmation by appropriate federal agencies regarding the availability of federal financial participation for the payment adjustment program at a level of at least 40 percent of the percentage of federal financial participation that is normally applicable for Medi-Cal expenditures for acute inpatient hospital services. At the time federal approval is first obtained, the department shall proceed pursuant to subparagraphs (A) and (B) in connection with the suspended payment adjustment amounts.

(A) Except as provided by subdivision (*l*), or by any other subdivision of this section, any payment adjustment amounts which were suspended shall, within 60 days, be paid for all those billings paid through Medi-Cal claims payment systems during periods of time, on or after July 1, 1991, for which federal approval is first effective for the payment adjustment program.

(B) Payment adjustment amounts shall not be paid in connection with any Medi-Cal billings which were paid through Medi-Cal claims payment systems during any period of time for which federal approval is not effective for the payment adjustment program.

(3) As a limitation to paragraph (1), the amendments to this section enacted during calendar year 1993 shall not be implemented until the department has obtained any approvals that are necessary under federal law. Until such time as all necessary federal approvals are obtained, the payment adjustment program shall continue as though no amendments had been enacted during calendar year 1993. At such time as all necessary federal approvals have been obtained, the amendments enacted during calendar year 1993, shall be implemented effective as of the earliest effective date permissible under federal law.

(e) To qualify for payment adjustment amounts under this section, a hospital shall have been included on the disproportionate share list for the particular payment adjustment year. The list shall consist of those hospitals which satisfy both of the following requirements:

(1) The hospital shall meet the federal requirements for disproportionate share status set forth in subsection (d) of Section 1396r-4 of Title 42 of the United States Code.

(2) Either of the following shall apply:

(A) The hospital's medicaid inpatient utilization rate, as defined in Section 1396r-4(b) (2) of Title 42 of the United States Code, shall be at least one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the state.

(B) The hospital's low-income utilization rate shall exceed 25 percent.

(f) (1) For the 1991–92 payment adjustment year, a disproportionate share list shall be issued by the department no later than 65 days after the enactment of this section. For subsequent payment adjustment years, a tentative listing shall be prepared by the department at least 60 days before the beginning of the particular payment adjustment year, and a disproportionate share list shall be issued no later than five days after the beginning of the particular payment adjustment year. All state agencies shall take all necessary steps to supply the most recent data available to the department to meet these deadlines. The Office of Statewide Health Planning and Development shall provide to the department, no later than March 1 of each year, the data specified by the department, as the data existed on the statewide data base file as of February 1 of each year (except that for the 1991–92 payment adjustment year, the Office of Statewide Health Planning and Development shall provide data as it existed on the statewide data base file as of August 30, 1991), from all of the following:

(A) Hospital annual disclosure reports, filed with the Office of Statewide Health Planning and Development pursuant to Section 443.31 of the Health and Safety Code, for hospital fiscal years which ended during the calendar year ending 13 months prior to the applicable February 1.

(B) Annual reports of hospitals, filed with the Office of Statewide Health Planning and Development pursuant to Section 439.2 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(C) Hospital patient discharge data reports, filed with the Office of Statewide Health Planning and Development pursuant to subdivision (g) of Section 443.31 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(D) Any other materials on file with the Office of Statewide Health Planning and Development.

(2) The disproportionate share list shall show all of the following:

(A) The name of the hospital.

(B) Based on the most recent annual data available, as it existed on the Office of Statewide Health Planning and Development statewide data base file as of February 1 of each year, and August 30 for the 1991–92 payment adjustment year, and expressed as a percentage, the hospital's Medi-Cal utilization rate and low-income utilization rate as referred to in paragraph (2) of subdivision (e). The department shall determine these rates in accordance with paragraph (4).

(C) Based on the hospital's low-income utilization rate, the hospital's low-income number.

(3) The department shall determine a hospital's satisfaction of paragraph (1) of subdivision (e) based on the most recent annual data available, as it existed on the Office of Statewide Health Planning and Development statewide data base file as of February 1 of each year, and August 30 for the 1991–92 payment adjustment year, whether the data relates to operations under present or previous ownership.

(4) To determine a hospital's Medi-Cal inpatient utilization rate and low-income utilization rate for purposes of disproportionate share lists, the department shall utilize the same methodology, formulae, and data sources as set forth in connection with interim determinations in Attachment 4.19-A of the Medi-Cal State Plan (effective on or about July 1, 1990), except that the following shall apply:

(A) The calculations shall not be interim, but shall be final for purposes of this section.

(B) To the extent permitted by federal law, the payment adjustment amounts provided to hospitals pursuant to this section shall not be included for any purpose in the calculations and determinations made pursuant to this section.

(C) Any other variation otherwise required by this section or by federal law.

(D) The data utilized by the department shall relate to the hospital under present and previous ownership. When there has been a change of ownership, a change in the location of the main hospital facility, or a material change in patient admission patterns during the twenty-four months immediately prior to the payment adjustment year, and the change has resulted in a diminution of access for Medi-Cal inpatients at the hospital, all as determined by the department, the department shall, to the extent permitted by federal law, utilize current data that are reflective of the diminution of access, even if the data are not annual data.

(5) For purposes of payment adjustment amounts under this section, each disproportionate share list shall be considered complete when issued by the department pursuant to paragraph (1). Nothing on a disproportionate share list, once issued by the department, shall be modified for any reason, other than mathematical or

typographical errors or omissions on the part of the department or the Office of Statewide Health Planning and Development in preparation of the list.

(g) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital, on the first day of the payment adjustment year, is a major teaching hospital, the hospital shall be paid the sum of all of the following amounts, except as limited by other applicable provisions of this section:

(1) A minimum payment adjustment of three hundred dollars ($300).

(2) The sum of the following amounts, minus three hundred dollars ($300):

(A) A ninety dollar ($90) payment adjustment for each percentage point, from 25 percent to 29 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(B) A seventy dollar ($70) payment adjustment for each percentage point, from 30 percent to 34 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(C) A fifty dollar ($50) payment adjustment for each percentage point, from 35 percent to 44 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(D) A thirty dollar ($30) payment adjustment for each percentage point, from 45 percent to 64 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(E) A ten dollar ($10) payment adjustment for each percentage point, from 65 percent to 80 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(3) If the sum calculated under paragraph (2) is less than zero, it shall be disregarded for payment purposes.

(h) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital, on the first day of the payment adjustment year, is a children's hospital, the hospital shall be paid the sum of four hundred fifty dollars ($450), except as limited by other applicable provisions of this section.

(i) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital, on the first day of the payment adjustment year, is an acute psychiatric hospital or an alcohol-drug rehabilitation hospital, the hospital shall be paid the sum of all of the following amounts, except as limited by other applicable provisions of this section:

(1) A minimum payment adjustment of fifty dollars ($50).

(2) The sum of the following amounts, minus fifty dollars ($50):

(A) A ten dollar ($10) payment adjustment for each percentage point, from 25 to 29 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(B) A seven dollar ($7) payment adjustment for each percentage point, from 30 to 34 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(C) A five dollar ($5) payment adjustment for each percentage point, from 35 to 44 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(D) A two dollar ($2) payment adjustment for each percentage point, from 45 to 64 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(E) A one dollar ($1) payment adjustment for each percentage point, from 65 to 80 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(3) If the sum calculated under paragraph (2) is less than zero, it shall be disregarded for payment purposes.

(j) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital does not meet the criteria for receiving payments under subdivision (g), (h), or (i) above, the hospital shall be paid the sum of all of the following amounts, except as limited by other applicable provisions of this section:

(1) A minimum payment adjustment of one hundred dollars ($100).

(2) If the hospital is an emergency services hospital at the time the payment adjustment is paid, a two hundred dollar ($200) payment adjustment.

(3) The sum of the following amounts minus one hundred dollars ($100), and minus an additional two hundred dollars ($200) if the hospital is an emergency services hospital at the time the payment adjustment is paid:

(A) A forty dollar ($40) payment adjustment for each percentage point, from 25 percent to 29 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(B) A thirty-five dollar ($35) payment adjustment for each percentage point, from 30 percent to 34 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(C) A thirty dollar ($30) payment adjustment for each percentage point, from 35 percent to 44 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(D) A twenty dollar ($20) payment adjustment for each percentage point, from 45 percent to 64 percent, inclusive, of the

hospital's low-income number as shown on the disproportionate share list.

(E) A fifteen dollar ($15) payment adjustment for each percentage point, from 65 percent to 80 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(4) If the sum calculated under paragraph (3) is less than zero, it shall be disregarded for payment purposes.

(k) (1) For any particular payment adjustment year, no hospital may qualify for payments under more than one subdivision among subdivisions (g), (h), (i), and (j). If any hospital qualifies under more than one subdivision, the department shall determine which subdivision shall apply for payments.

(2) For each payment adjustment year beginning with 1992–93, the total applicable per diem payment adjustment amount calculated for each eligible hospital pursuant to subdivision (g), (h), (i), or (j) shall be adjusted by a percentage identical to the percentage increase in transfer amounts that the department has authorized for use pursuant to paragraph (1) of subdivision (h) of Section 14163 for the particular fiscal year.

(3) If an eligible hospital ordinarily is paid by or on behalf of the department for Medi-Cal acute inpatient hospital services based on a payment methodology other than per diem payments, the eligible hospital shall receive payment adjustment amounts under subdivision (g), (h), (i), or (j) of this section based on its approved Medi-Cal days of acute inpatient hospital care, in the same fashion as all other eligible hospitals under this section.

(*l*) (1) (A) In determining Medi-Cal days of service for purposes of payment adjustments under this section, the department shall recognize all acute inpatient hospital days of service required to be taken into account under federal law.

(B) For the 1992–93 payment year, the department may consider the Medi-Cal days of service provided by the qualifying hospitals for Medi-Cal patients covered by the prepaid health plans contracting directly with the Medi-Cal program in achieving their maximum payments.

(C) For 1993–94 and subsequent payment years, the department may consider the Medi-Cal days of service provided by hospitals for Medi-Cal patients covered by the prepaid health plans contracting directly with the Medi-Cal program in determining the Medi-Cal utilization rate and the maximum days of payment. Additionally, the department may consider the days of service provided by the qualifying hospitals for Medi-Cal patients covered by the prepaid health plans contracting directly with the Medi-Cal program in achieving their maximum payments in those payment years.

(2) Notwithstanding paragraph (1), there shall be, for each eligible hospital, a maximum limit on the number of Medi-Cal acute inpatient hospital days for which payment adjustment amounts may be paid under this section with respect to each payment adjustment

year. The maximum limit shall be that number of days that equals 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days, as determined from all Medi-Cal paid claims records available through April 1 preceding the beginning of the payment adjustment year.

(m) No payment rate for any service rendered by any hospital under the Medi-Cal selective provider contracting program shall be reduced as a result of this section.

(n) Notwithstanding any other provision of law, to the extent consistent with federal law, and except as provided by this section, no maximum payment limit shall be placed on the amount of Medi-Cal payment adjustments which may be made to disproportionate share hospitals. The payments made to disproportionate share hospitals pursuant to this section and Section 14105.99 shall not cause any other amounts paid or payable to a hospital to be deemed in excess of any applicable maximum payment limit.

(o) The department shall promptly seek any necessary federal approvals in order to implement this section, including any amendments. Pursuant to Section 1396r-4 of Title 42 of the United States Code, and related federal medicaid statutes and regulations, payment adjustment systems for inpatient hospital services rendered by disproportionate share hospitals shall be included in a state's medicaid plan. Therefore, the department shall, prior to the end of the calendar quarter during which this section is enacted or amended, submit for federal approval an amendment to the Medi-Cal State Plan in connection with the payment adjustment program.

(p) If, for any payment adjustment year, the amounts in the fund, when matched by federal funds pursuant to customary Medi-Cal accounting procedures, are insufficient to pay some or all of the payment adjustment amounts otherwise due under this section, payment adjustment amounts shall be reduced in accordance with the following paragraphs to resolve the insufficiency.

(1) All payment adjustment amounts for the entire payment adjustment year shall be reduced proportionately not to exceed 2 percent of the total payment adjustment amounts which otherwise would have been paid for the entire payment adjustment year.

(2) If the payment reductions authorized by paragraph (1) do not resolve the insufficiency for the payment adjustment year, then, to the extent permitted by federal law, the following shall apply:

(A) The payment adjustment amounts, as reduced by paragraph 1, shall remain in effect for each eligible hospital whose low-income number is 30 percent or more.

(B) The payment adjustment amounts, as reduced by paragraph (1), for all other eligible hospitals shall be further reduced proportionately to resolve the insufficiency, but in no event to a level which would result in total payments to the eligible hospital in an amount less than 65 percent of the total payment adjustment

amounts which would have been payable to the eligible hospital for the entire payment adjustment year had no reductions taken place.

(3) If the steps set forth in paragraph (2) are not permissible under federal law, or are not adequate to resolve the insufficiency, the payments to all eligible hospitals for the entire payment adjustment year shall be further reduced proportionately to resolve the insufficiency, but in no event to a level which would result in total payments to the eligible hospital in an amount less than 65 percent of the total payment adjustment amounts which would have been payable to the eligible hospital for the entire payment adjustment year had no reductions taken place.

(4) At such time as all eligible hospitals have been reduced to the 65 percent payment level set forth in paragraphs (2) and (3), the payments to all eligible hospitals for the payment adjustment year shall be further reduced proportionately to resolve any remaining insufficiency.

(q) (1) If it is necessary to apply the provisions of paragraph (3) of subdivision (p) at any time, the department shall, as soon as practicable, evaluate why the insufficiency arose and identify the projected occurrence and duration of any future insufficiencies.

(2) If the department determines as a result of the evaluations under paragraph (1) that (A) implementation of paragraph (3) of subdivision (p) will likely be necessary to resolve additional insufficiencies for the current payment adjustment year or the next payment adjustment year; and (B) that the level of federal financial participation realized by the payment adjustment program, for the current payment adjustment year as a whole, will be less than 30 percent of the percentage of federal financial participation that normally is applicable for Medi-Cal expenditures for acute inpatient hospital services, and that the level of federal financial participation for the payment adjustment program is expected to continue to remain below that 30 percent level for the next payment adjustment year as a whole, the department shall, as soon as practicable, implement paragraphs (3) and (4).

(3) If the department determines that the circumstances described in paragraph (2) are present, the payment adjustment program shall be terminated, effective as of the earliest date permissible under federal law. In that event, all installment payments to the fund which are already due pursuant to Section 14163 at the time of the department's determination shall remain due, and shall be collected by the Controller. However, installment payments which are not yet due at that time shall not become due.

(4) Within 90 days after the termination of the payment adjustment program, as referred to in paragraph (3), or as soon as practicable, the department shall determine whether any amounts remain in the fund which are not needed to pay prior payment adjustment amounts under this section. If remaining amounts exist in the fund, they shall be refunded to transferor entities on a pro rata basis, within 45 days after the date of the department's

determination.

(r) The state shall be held harmless from any federal disallowance resulting from payments made under this section, and from payments made to hospitals based on transfers accepted by the department under Section 14164. Any hospital that has received payments under this section, or based on transfers accepted by the department under Section 14164 shall be liable for any audit exception or federal disallowance only with respect to the payments made to that hospital. The department shall recoup from a hospital the amount of any audit exception or federal disallowance in the manner authorized by applicable laws and regulations.

(s) (1) The department may utilize existing administrative appeal procedures for purposes of any appealable matter that arises under the payment adjustment program. The matters that may be appealed shall be limited to those related to the following:

(A) Paragraph (5) of subdivision (f).

(B) State audit disallowances of amounts paid to hospitals under the payment adjustment program.

(2) Calculations which are final pursuant to paragraph (4) or (5) of subdivision (f) or the procedures or data on which those calculations are based, shall not be appealed.

(t) (1) Except as provided in paragraph (2), the department shall take all appropriate steps permitted by law and the Medi-Cal State Plan to ensure the following for all years of the payment adjustment program:

(A) That well baby (nursery) days and acute administrative days are included in the payment adjustment program in the same fashion as all other Medi-Cal days of acute inpatient hospital service.

(B) That, to the same extent as any other Medi-Cal days of acute inpatient hospital service, well baby (nursery) days and acute administrative days are included as payable days under the payment adjustment program and in the total of annualized Medi-Cal inpatient paid days.

(C) That, if pursuant to paragraph (2), any well baby (nursery) days or acute administrative days are not included in the payment adjustment program for payment purposes for any parts of the 1992–93 or 1993–94 payment adjustment years, all such days are nevertheless included in the total of annualized Medi-Cal inpatient paid days for all purposes under the payment adjustment program, unless otherwise barred by paragraph (2).

(2) In no event shall paragraph (1) be implemented in a fashion that is inconsistent with federal medicaid law or the Medi-Cal State Plan.

(u) (1) For the 1993–94 payment adjustment year, each eligible hospital shall also be eligible to receive a supplemental lump-sum payment adjustment, which shall be payable as a result of the hospital being included on the disproportionate share list as of September 30, 1993. For purposes of federal medicaid rules, including Section 447.297(d) of Title 42 of the Code of Federal

Regulations, the supplemental payment adjustments shall be applicable to the federal fiscal year that ends on September 30, 1993.

(2) The availability of supplemental payment adjustments under this subdivision shall be determined as follows:

(A) The final maximum state disproportionate share hospital allotment for California under the provisions of applicable federal medicaid rules shall be identified for the 1993 federal fiscal year. This final allotment is two billion one hundred ninety-one million four hundred fifty-one thousand dollars ($2,191,451,000), as specified at page 43186 of Volume 58 of the Federal Register.

(B) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, that are applicable to the 1993 federal fiscal year shall be determined. The applicability of the per diem payment adjustment amounts to the 1993 federal fiscal year shall be determined in accordance with federal medicaid rules, including Sections 447.297 (d) (3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The figure determined under subparagraph (B) shall be subtracted from the figure identified under subparagraph (A). If the remainder is a positive figure, supplemental lump-sum payment adjustments shall be made under this subdivision in accordance with paragraph (3).

(3) The amount of the supplemental lump-sum payment adjustment to each eligible hospital shall be computed as follows:

(A) The projected total of all per diem payment adjustment amounts payable to each particular eligible hospital under this section for the 1993–94 payment adjustment year shall be determined. For each hospital, this figure shall be identical to the figure used for the same hospital in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1993–94 state fiscal year.

(B) The projected totals for all eligible hospitals determined under subparagraph (A) shall be added together to determine an aggregate total of all projected per diem payment adjustments for 1993–94 payment adjustment year. This figure shall be identical to the aggregate figure for all hospitals used in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1993–94 state fiscal year.

(C) The figure determined for each eligible hospital under subparagraph (A) shall be divided by the aggregate figure determined under subparagraph (B), yielding a percentage figure for each hospital.

(D) The percentage figure determined for each hospital under subparagraph (C) shall be multiplied by the positive remainder calculated under subparagraph (C) of paragraph (2).

(E) The product as so determined for each eligible hospital under subparagraph (D) shall be the supplemental lump-sum payment adjustment amount payable to the particular hospital.

(4) The department shall make partial payments of the

supplemental lump-sum payment adjustments to eligible hospitals on or before January 1, 1994. The department shall make final calculations regarding the supplemental lump-sum payments based on data available as of March 1, 1994, and shall distribute the final payments promptly thereafter.

(5) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available. In doing so, the department shall comply with any procedures instituted by the Health Care Financing Administration in connection with Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

SEC. 2. Section 14163 of the Welfare and Institutions Code is amended to read:

14163. (a) For purposes of this section, the following definitions shall apply:

(1) "Public entity" means a county, a city, a city and county, the University of California, a local hospital district, a local health authority, or any other political subdivision of the state.

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

(3) "Disproportionate share hospital" means a hospital providing acute inpatient services to Medi-Cal beneficiaries that meets the criteria for disproportionate share status relating to acute inpatient services set forth in Section 14105.98.

(4) "Disproportionate share list" means the annual list of disproportionate share hospitals for acute inpatient services issued by the department pursuant to Section 14105.98.

(5) "Fund" means the Medi-Cal Inpatient Payment Adjustment Fund.

(6) "Eligible hospital" means, for a particular state fiscal year, a hospital on the disproportionate share list that is eligible to receive payment adjustment amounts under Section 14105.98 during that state fiscal year.

(7) "Transfer year" means the particular state fiscal year during which, or with respect to which, public entities are required by this section to make an intergovernmental transfer of funds to the Controller.

(8) "Transferor entity" means a public entity that, for a particular transfer year, is required by this section to make an intergovernmental transfer of funds to the Controller.

(9) "Transfer amount" means the amount of the intergovernmental transfer of funds that this section requires for a particular transferor entity for a particular transfer year.

(10) "Intergovernmental transfer" means a transfer of funds from a public entity to the state, that is local government financial

participation in Medi-Cal pursuant to the terms of this section.

(11) "Licensee" means an entity that has been issued a license to operate a hospital by the department.

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

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

(b) The Medi-Cal Inpatient Payment Adjustment Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to, and under the administrative control of, the department for the purposes specified in subdivision (d). The fund shall consist of the following:

(1) Transfer amounts collected by the Controller under this section, whether submitted by transferor entities pursuant to subdivision (i) or obtained by offset pursuant to subdivision (j).

(2) Any other intergovernmental transfers deposited in the fund, as permitted by Section 14164.

(3) Any interest that accrues with respect to amounts in the fund.

(c) Moneys in the fund, which shall not consist of any state general funds, shall be used as the source for the nonfederal share of payments to hospitals pursuant to Section 14105.98. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures, and used to make payments pursuant to Section 14105.98.

(d) Except as otherwise provided in Section 14105.98 or in any provision of law appropriating a specified sum of money to the department for administering this section and Section 14105.98, moneys in the fund shall be used only for the following:

(1) Payments to hospitals pursuant to Section 14105.98.

(2) (A) Except as provided in subparagraph (B), and except for the amount transferred pursuant to paragraph (3), transfers to the Health Care Deposit Fund in an amount equal to 11.419 percent of all transfer amounts deposited in the fund, the amount to be determined on a fiscal year basis. These transfers from the fund shall be made on a monthly basis to the Medi-Cal local assistance appropriation item (Item 4260-101-001 of the annual Budget Act) in support of Medi-Cal expenditures. No reductions shall apply to the percentage transferred to the Health Care Deposit Fund.

(B) (i) Except for the amount transferred pursuant to paragraph (3), transfers to the Health Care Deposit Fund in an amount equal to 13.988 percent of all transfer amounts deposited in the fund, the amount determined on a fiscal year basis. These transfers from the fund shall be made on a monthly basis to the Medi-Cal local assistance appropriation item (Item 4260-101-001 of the annual Budget Act) in support of Medi-Cal expenditures. No reductions shall apply to the percentage transferred to the Health Care Deposit Fund.

(ii) If the disproportionate share payments are not increased to the level necessary to yield an additional fifty million dollars ($50,000,000) net to the General Fund revenue by January 1, 1994, this subparagraph shall become operative on that date, subparagraph (A) shall become inoperative, and this subparagraph shall be applied retroactively to July 1, 1993.

(3) In the 1993–94 fiscal year, in addition to the amount transferred as specified in paragraph (2), fifteen million dollars ($15,000,000) shall also be transferred to the Medi-Cal local assistance appropriation item (Item 4260-101-001) of the Budget Act of 1993. The percentage requirement contained in paragraph (2) shall not apply to this additional transfer.

(e) For the 1991–92 state fiscal year, the department shall determine, no later than 70 days after the enactment of this section, the transferor entities for the 1991–92 transfer year. To make this determination, the department shall utilize the disproportionate share list for the 1991–92 fiscal year, which shall be issued by the department no later than 65 days after the enactment of this section, pursuant to paragraph (1) of subdivision (f) of Section 14105.98. The department shall identify each eligible hospital on the list for which a public entity is the licensee as of July 1, 1991. The public entity that is the licensee of each identified eligible hospital shall be a transferor entity for the 1991–92 transfer year.

(f) The department shall determine, no later than 70 days after the enactment of this section, the transfer amounts for the 1991–92 transfer year. The transfer amounts shall be determined as follows:

(1) The eligible hospitals for 1991–92 shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals shall be added together to determine an aggregate sum for the 1991–92 transfer year.

(2) The eligible hospitals for 1991–92 involving transferor entities as licensees shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid

claims records available through April 1, 1991. The products of these calculations for all eligible hospitals with transferor entities as licensees shall be added together to determine an aggregate sum for the 1991–92 transfer year.

(3) The aggregate sum determined under paragraph (1) shall be divided by the aggregate sum determined under paragraph (2), yielding a factor to be utilized in paragraph (4).

(4) (A) Except as provided in subparagraph (B), the factor determined in paragraph (3) shall be multiplied by the amount determined for each hospital under paragraph (2). The product of this calculation for each hospital in paragraph (2) shall be divided by 1.771, yielding a transfer amount for the particular transferor entity for the transfer year, except as provided by paragraph (5).

(B) (i) The factor determined in paragraph (3) shall be multiplied by the amount determined for each hospital under paragraph (2). The product of this calculation for each hospital in paragraph (2) shall be divided by 1.720, yielding a transfer amount for the particular transferor entity for the transfer year, except as provided by paragraph (5).

(ii) If the disproportionate share payments are not increased to the level necessary to yield an additional fifty million dollars ($50,000,000) net to the General Fund revenue by January 1, 1994, this subparagraph shall become operative on that date, subparagraph (A) shall become inoperative, and this subparagraph shall be applied retroactively to July 1, 1993.

(5) Only for the transfer year with respect to which the payment adjustment program set forth in Section 14105.98 first gains federal approval, a reduction in the transfer amount determined pursuant to paragraph (4) shall be applicable under the following circumstances:

(A) To determine any such reduction, the transfer amount determined pursuant to paragraph (4) shall first be multiplied by a fraction, the numerator of which is the number of days of the transfer year for which federal approval is effective and the denominator of which is 365.

(B) If the product of the calculation under subparagraph (A) is 80 percent or more of the transfer amount determined under paragraph (4), no reduction of the transfer amount determined under paragraph (4) shall apply.

(C) If the product of the calculation under subparagraph (A) is less than 80 percent of the transfer amount determined under paragraph (4), a reduction shall apply to the transfer amount determined under paragraph (4). The reduction shall be that particular amount which is equal to the difference between (i) the transfer amount determined under paragraph (4) and (ii) the amount calculated under subparagraph (A) divided by 80 percent.

(D) Any reduction of a transfer amount applicable under subparagraph (C) shall be spread equally among the installments referred to in subdivision (i).

(g) For the 1991–92 transfer year, the department shall notify

each transferor entity in writing of its applicable transfer amount or amounts no later than 70 days after the enactment of this section, which amount or amounts shall be subject to adjustment pursuant to subdivisions (f) and (i).

(h) For the 1992–93 transfer year and subsequent transfer years, transfer amounts shall be determined in the same procedural manner as set forth in subdivision (f), except:

(1) The department shall use all of the following:

(A) The disproportionate share list applicable to the particular transfer year, which shall be issued no later than five days after the beginning of the transfer year, to determine the eligible hospitals.

(B) The total per diem payment adjustment amounts calculated under Section 14105.98 for the particular transfer year.

(C) Data regarding annualized Medi-Cal inpatient paid days for the most recent calendar year ending prior to the beginning of the particular transfer year, as determined from all Medi-Cal paid claims records available through April 1 preceding the particular transfer year.

(D) The status of public entities as licensees of eligible hospitals as of July 1 of the particular transfer year.

Further, the transfer amounts calculated by the department may be increased by a percentage amount consistent with the Medi-Cal State Plan.

(2) For the 1993–94 transfer year, transfer amounts shall be increased on a pro rata basis for each transferor entity in the amounts necessary to achieve the following:

(A) To fund the nonfederal share of the total supplemental lump-sum payment adjustment amounts that arise under subdivision (u) of Section 14105.98. For purposes of this paragraph, the supplemental lump-sum payment adjustment amounts shall be deemed to arise as of September 30, 1993. Transfer amounts to fund the nonfederal share of the payments shall be paid by the transferor entities within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(B) In conjunction with the additional transfer amounts payable under subparagraph (A), to provide the appropriate amount of additional funds that will be available for transfer to the Health Care Deposit Fund pursuant to subdivision (d).

(3) The department shall prepare preliminary analyses and calculations regarding potential transfer amounts, and potential transferor entities shall be notified by the department of estimated transfer amounts, at least 60 days before the beginning of the particular transfer year. Written notices of transfer amounts shall be issued no later than five days after the beginning of the particular transfer year. These provisions, however, shall not apply to increases in transfer amounts described in paragraph (2) or to additional transfer amounts described in subdivision (o). All state agencies shall take all necessary steps in order to supply applicable data to the department to meet these deadlines. The Office of Statewide Health

Planning and Development shall provide to the department, no later than March 1 of each year, the data specified by the department, as the data existed on the statewide data base file as of February 1 of each year (except that for the 1991–92 transfer year, the Office of Statewide Health Planning and Development shall provide data as it existed on the statewide data base file as of August 30, 1991), from all of the following:

(A) Hospital annual disclosure reports, filed with the Office of Statewide Health Planning and Development pursuant to Section 443.31 of the Health and Safety Code, for hospital fiscal years which ended during the calendar year ending 13 months prior to the applicable February 1.

(B) Annual reports of hospitals, filed with the Office of Statewide Health Planning and Development pursuant to Section 439.2 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(C) Hospital patient discharge data reports, filed with the Office of Statewide Health Planning and Development pursuant to subdivision (g) of Section 443.31 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(D) Any other materials on file with the Office of Statewide Health Planning and Development.

(4) For the 1993–94 fiscal year, the transfer amount that would otherwise be required from the University of California pursuant to subdivision (f) shall be increased by fifteen million dollars ($15,000,000).

(i) (1) For the 1991–92 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments. Except as provided below, the first installment shall accrue on July 25, 1991, and all other installments shall accrue on the 5th day of each month thereafter from August through February.

(2) Notwithstanding paragraph (1), no installment shall be payable to the Controller until that date which is 20 days after the department notifies the transferor entity in writing that the payment adjustment program set forth in Section 14105.98 has first gained federal approval as part of the Medi-Cal program. For purposes of this paragraph, federal approval requires both (i) approval by appropriate federal agencies of an amendment to the Medi-Cal State Plan, as referred to in subdivision (o) of Section 14105.98, and (ii) confirmation by appropriate federal agencies regarding the availability of federal financial participation for the payment adjustment program set forth in Section 14105.98 at a level of at least 40 percent of the percentage of federal financial participation that is normally applicable for Medi-Cal expenditures for acute inpatient hospital services.

(3) If any installment that would otherwise be payable under paragraph (1) is not paid because of the provisions of paragraph (2),

then subparagraphs (A) and (B) shall be followed when federal approval is gained.

(A) All installments that were deferred based on the provisions of paragraph (2) shall be paid no later than 20 days after the department notifies the transferor entity in writing that federal approval has been gained, in an amount consistent with subparagraph (B).

(B) The installments paid pursuant to subparagraph (A) shall be paid in full, subject to an adjustment in amount pursuant to paragraph (5) of subdivision (f).

(4) All installments for the 1991–92 transfer year that arise in months after federal approval is gained shall be paid by the 5th day of the month or 20 days after the department notifies the transferor entity in writing that federal approval has been gained, whichever is later. These installments shall be subject to an adjustment in amount pursuant to paragraph (5) of subdivision (f).

(5) For the 1992–93 transfer year and subsequent transfer years, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments. The first installment shall be payable on July 10 of each transfer year. All other installments shall be payable on the 5th day of each month thereafter from August through February. This paragraph shall not apply to increases in transfer amounts described in paragraph (2) of subdivision (h) or to additional transfer amounts described in subdivision (o).

(6) A transferor entity may use any of the following funds for purposes of meeting its transfer obligations under this section:

(A) General funds of the transferor entity.

(B) Any other funds permitted by law to be used for these purposes, except that a transferor entity shall not submit to the Controller any federal funds unless those federal funds are authorized by federal law to be used to match other federal funds. In addition, no private donated funds from any health care provider, or from any person or organization affiliated with such a health care provider, shall be channeled through a transferor entity or any other public entity to the fund. The transferor entity shall be responsible for determining that funds transferred meet the requirements of this subparagraph.

(j) If a transferor entity does not submit any transfer amount within the time period specified in this section, the Controller shall offset immediately the amount owed against any funds which otherwise would be payable by the state to the transferor entity. The Controller, however, shall not impose an offset against any particular funds payable to the transferor entity where the offset would violate state or federal law.

(k) All amounts received by the Controller pursuant to subdivision (i), paragraph (2) of subdivision (h), or subdivision (o), or offset by the Controller pursuant to subdivision (j), shall immediately be deposited in the fund.

(*l*) For purposes of this section, the disproportionate share list utilized by the department for a particular transfer year shall be identical to the disproportionate share list utilized by the department for the same state fiscal year for purposes of Section 14105.98. Nothing on a disproportionate share list, once issued by the department, shall be modified for any reason other than mathematical or typographical errors or omissions on the part of the department or the Office of Statewide Health Planning and Development in preparation of the list.

(m) Neither the intergovernmental transfers required by this section, nor any elective transfer made pursuant to Section 14164, shall create, lead to, or expand the health care funding or service obligations for current or future years for any transferor entity, except as required of the state by this section or as may be required by federal law, in which case the state shall be held harmless by the transferor entities on a pro rata basis.

(n) No amount submitted to the Controller pursuant to subdivision (i), paragraph (2) of subdivision (h), or subdivision (o), or offset by the Controller pursuant to subdivision (j), shall be claimed or recognized as an allowable element of cost in Medi-Cal cost reports submitted to the department.

(o) Whenever additional transfer amounts are required to fund the nonfederal share of payment adjustment amounts under Section 14105.98 that are distributed after the close of the particular payment adjustment year to which the payment adjustment amounts apply, the additional transfer amounts shall be paid by the parties who were the transferor entities for the particular transfer year that was concurrent with the particular payment adjustment year. The additional transfer amounts shall be calculated under the formula that was in effect during the particular transfer year. The percentage of the additional transfer amounts available for transfer to the Health Care Deposit Fund under subdivision (d) shall be the percentage that was in effect during the particular transfer year. These additional transfer amounts shall be paid by transferor entities within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

SEC. 3. Notwithstanding any other provision of law, if the amendments to Section 14105.98 of the Welfare and Institutions Code made by this act are not successful in achieving the maximum possible federal financial participation for the Medi-Cal Inpatient Payment Adjustment Program, as tested against the disproportionate share hospital maximum allotment for California under applicable federal medicaid law, the State Department of Health Services may adopt an amendment to the Medi-Cal State Plan to provide for the allocation and distribution of any remaining portion of the federal allotment. Any such amendment to the Medi-Cal State Plan shall be structured in a fashion as consistent as possible with Section 14105.98 of the Welfare and Institutions Code, as amended by this act.

SEC. 4. The State Department of Health Services shall take such steps as are necessary to have published, on or before September 29, 1993, any public notices that are appropriate or required under federal or California law in order to ensure a federal medicaid effective date prior to October 1, 1993, for this act. Notwithstanding any other provision of law, the State Department of Health Services may arrange for the publication of the notice through a private vendor, on a bid or nonbid basis, on an exclusive or nonexclusive basis, without review or approval by any other department, agency, or instrumentality of the state. The cost of publishing the notice through a private vendor shall be recovered by the State Department of Health Services from the Medi-Cal Inpatient Payment Adjustment Fund.

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

In order to allow the timely appropriate administrative implementation of the disproportionate share provider reimbursement system, it is necessary that this act take effect immediately.

CHAPTER 573

An act to amend Sections 14005.21, 14085.6, and 14163 of, and to amend and repeal Section 14203 the Welfare and Institutions Code, and to amend Item 4120-101-001 of Section 2.00 of Chapter 55 of the Statutes of 1993, relating to Medi-Cal, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 14005.21 of the Welfare and Institutions Code is amended to read:

14005.21. (a) Any medically needy aged, blind, or disabled person who was categorically needy under this chapter on the basis of eligibility under Chapter 3 (commencing with Section 12000) or Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code for the month of August 1993, and was discontinued as of September 1, 1993, and who, but for the addition of Section 12200.015, would be eligible to receive benefits without a share of cost in September 1993 under this chapter, shall remain eligible to receive benefits without a share of cost under this chapter as if that person were categorically needy as long as he or she meets

other applicable requirements.

(b) The department shall implement this section regardless of the availability of federal financial participation for the share of cost paid from state funds pursuant to subdivision (a).

SEC. 2. Section 14085.6 of the Welfare and Institutions Code is amended to read:

14085.6. (a) Except as stated in subdivision (g), each hospital contracting to provide services under this article that meets the criteria contained in the state medicaid plan for disproportionate share hospital status shall be eligible to negotiate with the commission for distributions from the Emergency Services and Supplemental Payments Fund, which is hereby created. All distributions from the fund shall be pursuant to this section.

(b) (1) To the extent permitted by federal law, the department shall administer the fund in accordance with this section.

(2) The money in this fund shall be available for expenditure by the department for the purposes of this section, subject to approval through the regular budget process.

(c) The fund shall include all of the following:

(1) Subject to subdivision (*l*), all public funds transferred by public agencies to the department for deposit in the fund, as permitted under subdivision (a) of Section 433.45 of Title 42 of the Code of Federal Regulations or any other applicable federal medicaid laws. These transfers shall constitute local government financial participation in Medi-Cal as permitted under Section 1902 (a) (2) of the Social Security Act (Title 42 U.S.C. Sec. 1396a (a) (2)) and other applicable federal medicaid laws.

(2) Subject to subdivision (*l*), all private donated funds transferred by private individuals or entities for deposit in the fund as permitted under subdivision (b) of Section 433.45 of Title 42 of the Code of Federal Regulations or any other applicable federal medicaid laws.

(3) Any amounts appropriated to the fund by the Legislature.

(4) Interest that accrues on amounts in the fund.

(5) Moneys appropriated to the fund, or appropriated for poison control center grants and transferred to the fund, pursuant to the annual Budget Act.

(d) Amounts in the fund shall be used as the source for the nonfederal share of payments to hospitals under this section. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures for purposes of payments under this section.

(e) Distributions from the fund shall be supplemental to any and all other amounts that hospitals would have received under the contracting program, and under the state medicaid plan, including contract rate increases and supplemental payments and payment adjustments under distribution programs relating to disproportionate share hospitals.

(f) Distributions from the fund shall not serve as the state's

payment adjustment program under Section 1923 of the Social Security Act (42 U.S.C. Sec. 1396 r-4). To the extent permitted by federal law, and except as otherwise provided in this section, distributions from the fund shall not be subject to requirements contained in or related to Section 1923 of the Social Security Act (42 U.S.C. Sec. 1396 r-4). Distributions from the fund shall be supplemental contract payments and may be structured on any federally permissible basis, as negotiated between the commission and the hospital.

(g) In order to qualify for distributions from the fund, a hospital shall meet all of the following criteria:

(1) Be a contracting hospital under this article.

(2) Satisfy the state medicaid plan criteria referred to in subdivision (a).

(3) Be one of the following:

(A) A licensed provider of basic emergency services as described in Sections 70411 and following of Title 22 of the California Code of Regulations.

(B) A licensed provider of comprehensive emergency medical services as defined in Sections 70451 and following of Title 22 of the California Code of Regulations.

(C) A children's hospital as defined in Section 14087.21 that satisfies subparagraph (A) or (B) or that jointly provides basic or comprehensive emergency services in conjunction with another licensed hospital.

(4) Be able to demonstrate a purpose for additional funding under the selective provider contracting program including proposals relating to emergency services and other health care services that are made available, or will be made available, to Medi-Cal beneficiaries.

(h) (1) The department shall seek federal financial participation for expenditures made from the fund to the full extent permitted by federal law.

(2) The department shall promptly seek any necessary federal approvals regarding this section.

(i) Any funds remaining in the fund at the end of a fiscal year shall be carried forward for use in following fiscal years.

(j) For purposes of this section, "fund" means the Emergency Services and Supplemental Payments Fund.

(k) (1) Any public agency transferring amounts to the fund, as specified in paragraph (1) of subdivision (c), may for that purpose, utilize any revenues, grants, or allocations received from the state for health care programs or purposes, unless otherwise prohibited by law. A public agency may also utilize its general funds or any other public funds or revenues for purposes of transfers to the fund, unless otherwise prohibited by law.

(2) Notwithstanding paragraph (1), a public agency may transfer to the fund only those moneys that have a source that will qualify for federal financial participation under the provisions of the Medicaid

Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (P.L. 102-234) or other applicable federal medicaid laws.

(*l*) Public funds transferred pursuant to paragraph (1) of subdivision (c), and private donated funds transferred pursuant to paragraph (2) of subdivision (c), shall be deposited into the fund, and expended pursuant to this section. The director may accept only those funds that are certified by the transferring entity as qualifying for federal financial participation under the terms of the Medicaid Voluntary Contributions and Provider-Specific Tax Amendments of 1991 (P.L. 102-234) and may return any funds transferred in error.

(m) The department may adopt emergency regulations, if necessary, for the purposes of this section.

(n) The state shall be held harmless from any federal disallowance resulting from this section. A hospital receiving supplemental reimbursement pursuant to this section shall be liable for any reduced federal financial participation resulting from the implementation of this section with respect to that hospital. The state may recoup that federal disallowance from the hospital in any manner authorized by law or contract.

SEC. 3. Section 14163 of the Welfare and Institutions Code is amended to read:

14163. (a) For purposes of this section, the following definitions shall apply:

(1) "Public entity" means a county, a city, a city and county, the University of California, a local hospital district, a local health authority, or any other political subdivision of the state.

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

(3) "Disproportionate share hospital" means a hospital providing acute inpatient services to Medi-Cal beneficiaries that meets the criteria for disproportionate share status relating to acute inpatient services set forth in Section 14105.98.

(4) "Disproportionate share list" means the annual list of disproportionate share hospitals for acute inpatient services issued by the department pursuant to Section 14105.98.

(5) "Fund" means the Medi-Cal Inpatient Payment Adjustment Fund.

(6) "Eligible hospital" means, for a particular state fiscal year, a hospital on the disproportionate share list that is eligible to receive payment adjustment amounts under Section 14105.98 during that state fiscal year.

(7) "Transfer year" means the particular state fiscal year during which public entities are required by this section to make an intergovernmental transfer of funds to the Controller.

(8) "Transferor entity" means a public entity that, for a particular transfer year, is required by this section to make an intergovernmental transfer of funds to the Controller.

(9) "Transfer amount" means the amount of the intergovernmental transfer of funds that this section requires for a particular transferor entity for a particular transfer year.

(10) "Intergovernmental transfer" means a transfer of funds from a public entity to the state, that is local government financial participation in Medi-Cal pursuant to the terms of this section.

(11) "Licensee" means an entity that has been issued a license to operate a hospital by the department.

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

(b) The Medi-Cal Inpatient Payment Adjustment Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to, and under the administrative control of, the department for the purposes specified in subdivision (d). The fund shall consist of the following:

(1) Transfer amounts collected by the Controller under this section, whether submitted by transferor entities pursuant to subdivision (i) or obtained by offset pursuant to subdivision (j).

(2) Any other intergovernmental transfers deposited in the fund, as permitted by Section 14164.

(3) Any interest that accrues with respect to amounts in the fund.

(c) Moneys in the fund, which shall not consist of any state general funds, shall be used as the source for the nonfederal share of payments to hospitals pursuant to Section 14105.98. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures, and used to make payments pursuant to Section 14105.98.

(d) Except as otherwise provided in Section 14105.98 or in any provision of law appropriating a specified sum of money to the department for administering this section and Section 14105.98, moneys in the fund shall be used only for the following:

(1) Payments to hospitals pursuant to Section 14105.98.

(2) Except for the amount transferred pursuant to paragraph (3), transfers to the Health Care Deposit Fund in the amount of one hundred fifty-four million seven hundred fifty-seven thousand six hundred ninety dollars ($154,757,690), beginning in the 1993–94 fiscal year. Notwithstanding any other provision of law, the amount specified in this paragraph shall be in addition to any amounts transferred to the Health Care Deposit Fund arising from changes of any kind attributable to payment adjustment years prior to the 1993–94 payment adjustment year. These transfers from the fund

shall be made in eight equal monthly installments to the Medi-Cal local assistance appropriation item (Item 4260-101-001 of the annual Budget Act) in support of Medi-Cal expenditures. The first installment shall accrue in July of each transfer year, and all other installments shall accrue monthly thereafter from August through February.

(3) In the 1993–94 fiscal year, in addition to the amount transferred as specified in paragraph (2), fifteen million dollars ($15,000,000) shall also be transferred to the Medi-Cal local assistance appropriation item (Item 4260-101-001) of the Budget Act of 1993. The percentage requirement contained in paragraph (2) shall not apply to this additional transfer.

(e) For the 1991–92 state fiscal year, the department shall determine, no later than 70 days after the enactment of this section, the transferor entities for the 1991–92 transfer year. To make this determination, the department shall utilize the disproportionate share list for the 1991–92 fiscal year, which shall be issued by the department no later than 65 days after the enactment of this section, pursuant to paragraph (1) of subdivision (f) of Section 14105.98. The department shall identify each eligible hospital on the list for which a public entity is the licensee as of July 1, 1991. The public entity that is the licensee of each identified eligible hospital shall be a transferor entity for the 1991–92 transfer year.

(f) The department shall determine, no later than 70 days after the enactment of this section, the transfer amounts for the 1991–92 transfer year. The transfer amounts shall be determined as follows:

(1) The eligible hospitals for 1991–92 shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals shall be added together to determine an aggregate sum for the 1991–92 transfer year.

(2) The eligible hospitals for 1991–92 involving transferor entities as licensees shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals with transferor entities as licensees shall be added together to determine an aggregate sum for the 1991–92 transfer year.

(3) The aggregate sum determined under paragraph (1) shall be divided by the aggregate sum determined under paragraph (2), yielding a factor to be utilized in paragraph (4).

(4) The factor determined in paragraph (3) shall be multiplied by

the amount determined for each hospital under paragraph (2). The product of this calculation for each hospital in paragraph (2) shall be divided by 1.771, yielding a transfer amount for the particular transferor entity for the transfer year, except as provided by paragraph (5).

(5) Only for the transfer year with respect to which the payment adjustment program set forth in Section 14105.98 first gains federal approval, a reduction in the transfer amount determined pursuant to paragraph (4) shall be applicable under the following circumstances:

(A) To determine any such reduction, the transfer amount determined pursuant to paragraph (4) shall first be multiplied by a fraction, the numerator of which is the number of days of the transfer year for which federal approval is effective and the denominator of which is 365.

(B) If the product of the calculation under subparagraph (A) is 80 percent or more of the transfer amount determined under paragraph (4), no reduction of the transfer amount determined under paragraph (4) shall apply.

(C) If the product of the calculation under subparagraph (A) is less than 80 percent of the transfer amount determined under paragraph (4), a reduction shall apply to the transfer amount determined under paragraph (4). The reduction shall be that particular amount which is equal to the difference between (i) the transfer amount determined under paragraph (4) and (ii) the amount calculated under subparagraph (A) divided by 80 percent.

(D) Any reduction of a transfer amount applicable under subparagraph (C) shall be spread equally among the installments referred to in subdivision (i).

(g) For the 1991–92 transfer year, the department shall notify each transferor entity in writing of its applicable transfer amount or amounts no later than 70 days after the enactment of this section, which amount or amounts shall be subject to adjustment pursuant to subdivisions (f) and (i).

(h) For the 1992–93 transfer year and subsequent transfer years, transfer amounts shall be determined in the same procedural manner as set forth in subdivision (f), except:

(1) The department shall use all of the following:

(A) The disproportionate share list applicable to the particular transfer year, which shall be issued no later than five days after the beginning of the transfer year, to determine the eligible hospitals.

(B) The total per diem payment adjustment amounts calculated under Section 14105.98 for the particular transfer year.

(C) Data regarding annualized Medi-Cal inpatient paid days for the most recent calendar year ending prior to the beginning of the particular transfer year, as determined from all Medi-Cal paid claims records available through April 1 preceding the particular transfer year.

(D) The status of public entities as licensees of eligible hospitals as of July 1 of the particular transfer year.

Further, the transfer amounts calculated by the department may be increased by a percentage amount consistent with the Medi-Cal State Plan.

(2) The department shall prepare preliminary analyses and calculations regarding potential transfer amounts, and potential transferor entities shall be notified by the department of estimated transfer amounts, at least 60 days before the beginning of the particular transfer year. Written notices of transfer amounts shall be issued no later than five days after the beginning of the particular transfer year. All state agencies shall take all necessary steps in order to supply applicable data to the department to meet these deadlines. The Office of Statewide Health Planning and Development shall provide to the department, no later than March 1 of each year, the data specified by the department, as the data existed on the statewide data base file as of February 1 of each year (except that for the 1991–92 transfer year, the Office of Statewide Health Planning and Development shall provide data as it existed on the statewide data base file as of August 30, 1991), from all of the following:

(A) Hospital annual disclosure reports, filed with the Office of Statewide Health Planning and Development pursuant to Section 443.31 of the Health and Safety Code, for hospital fiscal years which ended during the calendar year ending 13 months prior to the applicable February 1.

(B) Annual reports of hospitals, filed with the Office of Statewide Health Planning and Development pursuant to Section 439.2 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(C) Hospital patient discharge data reports, filed with the Office of Statewide Health Planning and Development pursuant to subdivision (g) of Section 443.31 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(D) Any other materials on file with the Office of Statewide Health Planning and Development.

(3) For the 1993–94 transfer year and subsequent transfer years, the divisor to be used for purposes of the calculation referred to in paragraph (4) of subdivision (f) shall be determined by the department. The divisor shall be established to ensure that the appropriate amount of transfers from transferor entities are received into the fund to satisfy the requirements of Section 14105.98 for the particular transfer year. For the 1993–94 transfer year, the divisor shall be 1.742. Any amounts in the fund that are not expended, or estimated to be required for expenditure under Section 14105.98, with respect to a particular fiscal year shall be returned on a pro rata basis to the transferor entities within 120 days after the end of the particular fiscal year.

(4) For the 1993–94 fiscal year, the transfer amount that would otherwise be required from the University of California shall be increased by fifteen million dollars ($15,000,000).

(i) (1) For the 1991–92 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments. Except as provided below, the first installment shall accrue on July 25, 1991, and all other installments shall accrue on the 5th day of each month thereafter from August through February.

(2) Notwithstanding paragraph (1), no installment shall be payable to the Controller until that date which is 20 days after the department notifies the transferor entity in writing that the payment adjustment program set forth in Section 14105.98 has gained federal approval as part of the Medi-Cal program. For purposes of this section, federal approval requires both (i) approval by appropriate federal agencies of an amendment to the Medi-Cal State Plan, as referred to in subdivision (o) of Section 14105.98, and (ii) confirmation by appropriate federal agencies regarding the availability of federal financial participation for the payment adjustment program set forth in Section 14105.98 at a level of at least 40 percent of the percentage of federal financial participation that is normally applicable for Medi-Cal expenditures for acute inpatient hospital services.

(3) If any installment that would otherwise be payable under paragraph (1) is not paid because of the provisions of paragraph (2), then subparagraphs (A) and (B) shall be followed when federal approval is gained.

(A) All installments that were deferred based on the provisions of paragraph (2) shall be paid no later than 20 days after the department notifies the transferor entity in writing that federal approval has been gained, in an amount consistent with subparagraph (B).

(B) The installments paid pursuant to subparagraph (A) shall be paid in full, subject to an adjustment in amount pursuant to paragraph (5) of subdivision (f).

(4) All installments for the 1991–92 transfer year that arise in months after federal approval is gained shall be paid by the 5th day of the month or 20 days after the department notifies the transferor entity in writing that federal approval has been gained, whichever is later. These installments shall be subject to an adjustment in amount pursuant to paragraph (5) of subdivision (f).

(5) For the 1992–93 transfer year and subsequent transfer years, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments. The first installment shall be payable on July 10 of each transfer year. All other installments shall be payable on the 5th day of each month thereafter from August through February.

(6) A transferor entity may use any of the following funds for purposes of meeting its transfer obligations under this section:

(A) General funds of the transferor entity.

(B) Any other funds permitted by law to be used for these purposes, except that a transferor entity shall not submit to the

Controller any federal funds unless those federal funds are authorized by federal law to be used to match other federal funds. In addition, no private donated funds from any health care provider, or from any person or organization affiliated with such a health care provider, shall be channeled through a transferor entity or any other public entity to the fund. The transferor entity shall be responsible for determining that funds transferred meet the requirements of this subparagraph.

(j) If a transferor entity does not submit any transfer amount within the time period specified in this section, the Controller shall offset immediately the amount owed against any funds which otherwise would be payable by the state to the transferor entity. The Controller, however, shall not impose an offset against any particular funds payable to the transferor entity where the offset would violate state or federal law.

(k) All amounts received by the Controller pursuant to subdivision (i), or offset by the Controller pursuant to subdivision (j), shall immediately be deposited in the fund.

(*l*) For purposes of this section, the disproportionate share list utilized by the department for a particular transfer year shall be identical to the disproportionate share list utilized by the department for the same state fiscal year for purposes of Section 14105.98. Nothing on a disproportionate share list, once issued by the department, shall be modified for any reason other than mathematical or typographical errors or omissions on the part of the department or the Office of Statewide Health Planning and Development in preparation of the list.

(m) Neither the intergovernmental transfers required by this section, nor any elective transfer made pursuant to Section 14164, shall create, lead to, or expand the health care funding or service obligations for current or future years for any transferor entity, except as required of the state by this section or as may be required by federal law, in which case the state shall be held harmless by the transferor entities on a pro rata basis.

(n) No amount submitted to the Controller pursuant to subdivision (i), or offset by the Controller pursuant to subdivision (j), shall be claimed or recognized as an allowable element of cost in Medi-Cal cost reports submitted to the department.

(o) (1) Ten million dollars ($10,000,000) of the amount transferred from the Medi-Cal Inpatient Payment Adjustment Fund to the Health Care Deposit Fund due to amounts transferred attributable to years prior to the 1993–94 fiscal year is hereby appropriated without regard to fiscal years to the State Department of Health Services to be used to support the development of managed care programs under the department's plan to expand Medi-Cal managed care.

(2) These funds shall be used by the department for both of the following purposes: (A) distributions to counties or other local entities that contract with the department to receive those funds to

offset a portion of the costs of forming the local initiative entity, and (B) distributions to local initiative entities that contract with the department to receive those funds to offset a portion of the costs of developing the local initiative health delivery system in accordance with the department's plan to expand Medi-Cal managed care.

(3) Entities contracting with the department for any portion of the ten million dollars ($10,000,000) shall meet the objectives of the department's plan to expand Medi-Cal managed care with regard to traditional and safety net providers.

(4) Entities contracting with the department for any portion of the ten million dollars ($10,000,000) may be authorized under those contracts to utilize their funds to provide for reimbursement of the costs of local organizations and entities incurred in participating in the development and operation of a local initiative.

(5) To the full extent permitted by state and federal law, these funds shall be distributed by the department for expenditure at the local level in a manner that qualifies for federal financial participation under the medicaid program.

SEC. 4. Section 14163 of the Welfare and Institutions Code is amended to read:

14163. (a) For purposes of this section, the following definitions shall apply:

(1) "Public entity" means a county, a city, a city and county, the University of California, a local hospital district, a local health authority, or any other political subdivision of the state.

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

(3) "Disproportionate share hospital" means a hospital providing acute inpatient services to Medi-Cal beneficiaries that meets the criteria for disproportionate share status relating to acute inpatient services set forth in Section 14105.98.

(4) "Disproportionate share list" means the annual list of disproportionate share hospitals for acute inpatient services issued by the department pursuant to Section 14105.98.

(5) "Fund" means the Medi-Cal Inpatient Payment Adjustment Fund.

(6) "Eligible hospital" means, for a particular state fiscal year, a hospital on the disproportionate share list that is eligible to receive payment adjustment amounts under Section 14105.98 during that state fiscal year.

(7) "Transfer year" means the particular state fiscal year during which, or with respect to which, public entities are required by this section to make an intergovernmental transfer of funds to the Controller.

(8) "Transferor entity" means a public entity that, for a particular transfer year, is required by this section to make an intergovernmental transfer of funds to the Controller.

(9) "Transfer amount" means the amount of the intergovernmental transfer of funds that this section requires for a particular transferor entity for a particular transfer year.

(10) "Intergovernmental transfer" means a transfer of funds from a public entity to the state, that is local government financial participation in Medi-Cal pursuant to the terms of this section.

(11) "Licensee" means an entity that has been issued a license to operate a hospital by the department.

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

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

(b) The Medi-Cal Inpatient Payment Adjustment Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to, and under the administrative control of, the department for the purposes specified in subdivision (d). The fund shall consist of the following:

(1) Transfer amounts collected by the Controller under this section, whether submitted by transferor entities pursuant to subdivision (i) or obtained by offset pursuant to subdivision (j).

(2) Any other intergovernmental transfers deposited in the fund, as permitted by Section 14164.

(3) Any interest that accrues with respect to amounts in the fund.

(c) Moneys in the fund, which shall not consist of any state general funds, shall be used as the source for the nonfederal share of payments to hospitals pursuant to Section 14105.98. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures, and used to make payments pursuant to Section 14105.98.

(d) Except as otherwise provided in Section 14105.98 or in any provision of law appropriating a specified sum of money to the department for administering this section and Section 14105.98, moneys in the fund shall be used only for the following:

(1) Payments to hospitals pursuant to Section 14105.98.

(2) Except for the amount transferred pursuant to paragraph (3), transfers to the Health Care Deposit Fund in the amount of one hundred fifty-four million seven hundred fifty-seven thousand six hundred ninety dollars ($154,757,690), beginning in the 1993–94 fiscal

year. Notwithstanding any other provision of law, the amount specified in this paragraph shall be in addition to any amounts transferred to the Health Care Deposit Fund arising from changes of any kind attributable to payment adjustment years prior to the 1993–94 payment adjustment year. These transfers from the fund shall be made in eight equal monthly installments to the Medi-Cal local assistance appropriation item (Item 4260-101-001 of the annual Budget Act) in support of Medi-Cal expenditures. The first installment shall accrue in July of each transfer year, and all other installments shall accrue monthly thereafter from August through February.

(3) In the 1993–94 fiscal year, in addition to the amount transferred as specified in paragraph (2), fifteen million dollars ($15,000,000) shall also be transferred to the Medi-Cal local assistance appropriation item (Item 4260-101-001) of the Budget Act of 1993. The percentage requirement contained in paragraph (2) shall not apply to this additional transfer.

(e) For the 1991–92 state fiscal year, the department shall determine, no later than 70 days after the enactment of this section, the transferor entities for the 1991–92 transfer year. To make this determination, the department shall utilize the disproportionate share list for the 1991–92 fiscal year, which shall be issued by the department no later than 65 days after the enactment of this section, pursuant to paragraph (1) of subdivision (f) of Section 14105.98. The department shall identify each eligible hospital on the list for which a public entity is the licensee as of July 1, 1991. The public entity that is the licensee of each identified eligible hospital shall be a transferor entity for the 1991–92 transfer year.

(f) The department shall determine, no later than 70 days after the enactment of this section, the transfer amounts for the 1991–92 transfer year. The transfer amounts shall be determined as follows:

(1) The eligible hospitals for 1991–92 shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals shall be added together to determine an aggregate sum for the 1991–92 transfer year.

(2) The eligible hospitals for 1991–92 involving transferor entities as licensees shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals with transferor entities as licensees shall be added together to determine an aggregate sum for

the 1991–92 transfer year.

(3) The aggregate sum determined under paragraph (1) shall be divided by the aggregate sum determined under paragraph (2), yielding a factor to be utilized in paragraph (4).

(4) The factor determined in paragraph (3) shall be multiplied by the amount determined for each hospital under paragraph (2). The product of this calculation for each hospital in paragraph (2) shall be divided by 1.771, yielding a transfer amount for the particular transferor entity for the transfer year, except as provided by paragraph (5).

(5) Only for the transfer year with respect to which the payment adjustment program set forth in Section 14105.98 first gains federal approval, a reduction in the transfer amount determined pursuant to paragraph (4) shall be applicable under the following circumstances:

(A) To determine any such reduction, the transfer amount determined pursuant to paragraph (4) shall first be multiplied by a fraction, the numerator of which is the number of days of the transfer year for which federal approval is effective and the denominator of which is 365.

(B) If the product of the calculation under subparagraph (A) is 80 percent or more of the transfer amount determined under paragraph (4), no reduction of the transfer amount determined under paragraph (4) shall apply.

(C) If the product of the calculation under subparagraph (A) is less than 80 percent of the transfer amount determined under paragraph (4), a reduction shall apply to the transfer amount determined under paragraph (4). The reduction shall be that particular amount which is equal to the difference between (i) the transfer amount determined under paragraph (4) and (ii) the amount calculated under subparagraph (A) divided by 80 percent.

(D) Any reduction of a transfer amount applicable under subparagraph (C) shall be spread equally among the installments referred to in subdivision (i).

(g) For the 1991–92 transfer year, the department shall notify each transferor entity in writing of its applicable transfer amount or amounts no later than 70 days after the enactment of this section, which amount or amounts shall be subject to adjustment pursuant to subdivisions (f) and (i).

(h) For the 1992–93 transfer year and subsequent transfer years, transfer amounts shall be determined in the same procedural manner as set forth in subdivision (f), except:

(1) The department shall use all of the following:

(A) The disproportionate share list applicable to the particular transfer year, which shall be issued no later than five days after the beginning of the transfer year, to determine the eligible hospitals.

(B) The total per diem payment adjustment amounts calculated under Section 14105.98 for the particular transfer year.

(C) Data regarding annualized Medi-Cal inpatient paid days for the most recent calendar year ending prior to the beginning of the

particular transfer year, as determined from all Medi-Cal paid claims records available through April 1 preceding the particular transfer year.

(D) The status of public entities as licensees of eligible hospitals as of July 1 of the particular transfer year.

Further, the transfer amounts calculated by the department may be increased by a percentage amount consistent with the Medi-Cal State Plan.

(2) For the 1993–94 transfer year, transfer amounts shall be increased on a pro rata basis for each transferor entity in the amounts necessary to fund the nonfederal share of the total supplemental lump-sum payment adjustment amounts that arise under subdivision (u) of Section 14105.98. For purposes of this paragraph, the supplemental lump-sum payment adjustment amounts shall be deemed to arise as of September 30, 1993. Transfer amounts to fund the nonfederal share of the payments shall be paid by the transferor entities within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(3) The department shall prepare preliminary analyses and calculations regarding potential transfer amounts, and potential transferor entities shall be notified by the department of estimated transfer amounts, at least 60 days before the beginning of the particular transfer year. These provisions, however, shall not apply to increases in transfer amounts described in paragraph (2) or to additional transfer amounts described in subdivision (o). Written notices of transfer amounts shall be issued no later than five days after the beginning of the particular transfer year. All state agencies shall take all necessary steps in order to supply applicable data to the department to meet these deadlines. The Office of Statewide Health Planning and Development shall provide to the department, no later than March 1 of each year, the data specified by the department, as the data existed on the statewide data base file as of February 1 of each year (except that for the 1991–92 transfer year, the Office of Statewide Health Planning and Development shall provide data as it existed on the statewide data base file as of August 30, 1991), from all of the following:

(A) Hospital annual disclosure reports, filed with the Office of Statewide Health Planning and Development pursuant to Section 443.31 of the Health and Safety Code, for hospital fiscal years which ended during the calendar year ending 13 months prior to the applicable February 1.

(B) Annual reports of hospitals, filed with the Office of Statewide Health Planning and Development pursuant to Section 439.2 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(C) Hospital patient discharge data reports, filed with the Office of Statewide Health Planning and Development pursuant to subdivision (g) of Section 443.31 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February

1.

(D) Any other materials on file with the Office of Statewide Health Planning and Development.

(4) For the 1993–94 transfer year and subsequent transfer years, the divisor to be used for purposes of the calculation referred to in paragraph (4) of subdivision (f) shall be determined by the department. The divisor shall be established to ensure that the appropriate amount of transfers from transferor entities are received into the fund to satisfy the requirements of Section 14105.98 for the particular transfer year. For the 1993–94 transfer year, the divisor shall be 1.742. Any amounts in the fund that are not expended, or estimated to be required for expenditure under Section 14105.98, with respect to a particular fiscal year shall be returned on a pro rata basis to the transferor entities within 120 days after the end of the particular fiscal year.

(5) For the 1993–94 fiscal year, the transfer amount that would otherwise be required from the University of California shall be increased by fifteen million dollars ($15,000,000).

(i) (1) For the 1991–92 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments. Except as provided below, the first installment shall accrue on July 25, 1991, and all other installments shall accrue on the 5th day of each month thereafter from August through February.

(2) Notwithstanding paragraph (1), no installment shall be payable to the Controller until that date which is 20 days after the department notifies the transferor entity in writing that the payment adjustment program set forth in Section 14105.98 has first gained federal approval as part of the Medi-Cal program. For purposes of this paragraph, federal approval requires both (i) approval by appropriate federal agencies of an amendment to the Medi-Cal State Plan, as referred to in subdivision (o) of Section 14105.98, and (ii) confirmation by appropriate federal agencies regarding the availability of federal financial participation for the payment adjustment program set forth in Section 14105.98 at a level of at least 40 percent of the percentage of federal financial participation that is normally applicable for Medi-Cal expenditures for acute inpatient hospital services.

(3) If any installment that would otherwise be payable under paragraph (1) is not paid because of the provisions of paragraph (2), then subparagraphs (A) and (B) shall be followed when federal approval is gained.

(A) All installments that were deferred based on the provisions of paragraph (2) shall be paid no later than 20 days after the department notifies the transferor entity in writing that federal approval has been gained, in an amount consistent with subparagraph (B).

(B) The installments paid pursuant to subparagraph (A) shall be paid in full, subject to an adjustment in amount pursuant to

paragraph (5) of subdivision (f).

(4) All installments for the 1991–92 transfer year that arise in months after federal approval is gained shall be paid by the 5th day of the month or 20 days after the department notifies the transferor entity in writing that federal approval has been gained, whichever is later. These installments shall be subject to an adjustment in amount pursuant to paragraph (5) of subdivision (f).

(5) For the 1992–93 transfer year and subsequent transfer years, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments. The first installment shall be payable on July 10 of each transfer year. All other installments shall be payable on the 5th day of each month thereafter from August through February. This paragraph shall not apply to increases in transfer amounts described in paragraph (2) of subdivision (h) or to additional transfer amounts described in subdivision (o).

(6) A transferor entity may use any of the following funds for purposes of meeting its transfer obligations under this section:

(A) General funds of the transferor entity.

(B) Any other funds permitted by law to be used for these purposes, except that a transferor entity shall not submit to the Controller any federal funds unless those federal funds are authorized by federal law to be used to match other federal funds. In addition, no private donated funds from any health care provider, or from any person or organization affiliated with such a health care provider, shall be channeled through a transferor entity or any other public entity to the fund. The transferor entity shall be responsible for determining that funds transferred meet the requirements of this subparagraph.

(j) If a transferor entity does not submit any transfer amount within the time period specified in this section, the Controller shall offset immediately the amount owed against any funds which otherwise would be payable by the state to the transferor entity. The Controller, however, shall not impose an offset against any particular funds payable to the transferor entity where the offset would violate state or federal law.

(k) All amounts received by the Controller pursuant to subdivision (i), paragraph (2) of subdivision (h), or subdivision (o), or offset by the Controller pursuant to subdivision (j), shall immediately be deposited in the fund.

(*l*) For purposes of this section, the disproportionate share list utilized by the department for a particular transfer year shall be identical to the disproportionate share list utilized by the department for the same state fiscal year for purposes of Section 14105.98. Nothing on a disproportionate share list, once issued by the department, shall be modified for any reason other than mathematical or typographical errors or omissions on the part of the department or the Office of Statewide Health Planning and Development in preparation of the list.

(m) Neither the intergovernmental transfers required by this section, nor any elective transfer made pursuant to Section 14164, shall create, lead to, or expand the health care funding or service obligations for current or future years for any transferor entity, except as required of the state by this section or as may be required by federal law, in which case the state shall be held harmless by the transferor entities on a pro rata basis.

(n) No amount submitted to the Controller pursuant to subdivision (i), paragraph (2) of subdivision (h), or subdivision (o), or offset by the Controller pursuant to subdivision (j), shall be claimed or recognized as an allowable element of cost in Medi-Cal cost reports submitted to the department.

(o) Whenever additional transfer amounts are required to fund the nonfederal share of payment adjustment amounts under Section 14105.98 that are distributed after the close of the particular payment adjustment year to which the payment adjustment amounts apply, the additional transfer amounts shall be paid by the parties who were the transferor entities for the particular transfer year that was concurrent with the particular payment adjustment year. The additional transfer amounts shall be calculated under the formula that was in effect during the particular transfer year. For transfer years prior to the 1993–94 transfer year, the percentage of the additional transfer amounts available for transfer to the Health Care Deposit Fund under subdivision (d) shall be the percentage that was in effect during the particular transfer year. These additional transfer amounts shall be paid by transferor entities within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(p) (1) Ten million dollars ($10,000,000) of the amount transferred from the Medi-Cal Inpatient Payment Adjustment Fund to the Health Care Deposit Fund due to amounts transferred attributable to years prior to the 1993–94 fiscal year is hereby appropriated without regard to fiscal years to the State Department of Health Services to be used to support the development of managed care programs under the department's plan to expand Medi-Cal managed care.

(2) These funds shall be used by the department for both of the following purposes: (A) distributions to counties or other local entities that contract with the department to receive those funds to offset a portion of the costs of forming the local initiative entity, and (B) distributions to local initiative entities that contract with the department to receive those funds to offset a portion of the costs of developing the local initiative health delivery system in accordance with the department's plan to expand Medi-Cal managed care.

(3) Entities contracting with the department for any portion of the ten million dollars ($10,000,000) shall meet the objectives of the department's plan to expand Medi-Cal managed care with regard to traditional and safety net providers.

(4) Entities contracting with the department for any portion of

the ten million dollars ($10,000,000) may be authorized under those contracts to utilize their funds to provide for reimbursement of the costs of local organizations and entities incurred in participating in the development and operation of a local initiative.

(5) To the full extent permitted by state and federal law, these funds shall be distributed by the department for expenditure at the local level in a manner that qualifies for federal financial participation under the medicaid program.

SEC. 5. Section 14203 of the Welfare and Institutions Code is amended to read:

14203. (a) For purposes of administering this chapter and Chapter 7 (commencing with Section 14000) of this part, the department is hereby designated as the single or appropriate state agency with full power to administer and adopt regulations in order to secure full compliance with applicable provisions of state and federal laws.

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

(c) Notwithstanding subdivision (h) of Section 11346.1 and Section 11349.6 of the Government Code, the department shall transmit these regulations directly to the Secretary of State for filing. The regulations shall become effective immediately upon filing by the Secretary of State.

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

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

SEC. 6. Section 14203 is added to the Welfare and Institutions Code, to read:

14203. (a) For purposes of administering this chapter and Chapter 7 (commencing with Section 14000) of this part, the department is hereby designated as the single or appropriate state agency with full power to administer and adopt regulations in order to secure full compliance with applicable provisions of state and

federal laws.

(b) The department may adopt regulations implementing this chapter as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Initial regulations to implement this chapter may be adopted as emergency regulations. The adoption of these initial emergency regulations shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety, or general welfare. Initial emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

(c) This section shall become operative on January 1, 1995.

SEC. 7. Item 4120-101-001 of Section 2.00 of Chapter 55 of the Statutes of 1993 is amended to read:

4120-101-001--For local assistance, Emergency Medical Services Authority, Program 10, grants to local agencies and for the purposes specified in Section 14085.6 of the Welfare and Institutions Code 2,435,000

Provisions:

1. The General Fund support for poison control centers shall augment, but not replace, local expenditures for existing poison control center services. These funds shall be used primarily to increase services to underserved counties and populations and for poison prevention and information services. The Director of the Emergency Medical Services Authority may contract with eligible poison control centers for the distribution of these funds.
2. Upon the request of the Director of the Emergency Services Authority, and subject to the approval of the State Department of Health Services, the California Medical Assistance Commission, and the Department of Finance, moneys appropriated in this item may be transferred to Item 4260-101-693 for local assistance for the purposes specified in Chapter 996 of the Statutes of 1989, as amended by Chapter 993 of the Statutes of 1992.

SEC. 8. Section 4 of this bill incorporates amendments to Section 14163 of the Welfare and Institutions Code proposed by both this bill and AB 1041 and makes further changes to that section as amended by AB 1041. It shall only become operative if (1) both bills are enacted and become effective, (2) each bill amends Section 14163 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1041, in which case Section 14163 of the Welfare and Institutions

Code, as amended by AB 1041, shall remain operative only until the operative date of this bill, at which time Section 4 of this bill shall become operative, and Section 3 of this bill shall not become operative.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that funds may be appropriated to implement provisions of the Budget Act of 1993 for the current fiscal year at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 574

An act to amend Sections 54691, 54692, 54693, 54694, and 54695 of, and to repeal and add Sections 54690 and 54696 of, the Education Code, relating to education.

[Approved by Governor September 28, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 54690 of the Education Code is repealed.

SEC. 2. Section 54690 is added to the Education Code, to read:

54690. (a) The Legislature hereby finds and declares that the partnership academies program has proven to be a highly effective state-school-private sector partnership, providing combined academic and occupational training to high school students who present a high risk of dropping out of school, and motivating those students to stay in school and graduate. Partnership academies are functioning in 45 high schools spread throughout the state, with occupational training successfully offered in over 15 different skill fields, including such diverse skills as electronics, computer technology, finance, agribusiness, graphic arts and printing, international business, and space. Partnership academies in San Mateo County have been honored with two national awards for excellence, and the California partnership academies have been given high accolades in various textbooks and studies addressing vocational programs.

(b) The Legislature finds the partnership academies are in the forefront of school efforts to integrate academic and vocational education and that they can be effective in providing an integrated learning program and high motivation toward pursuing skilled occupational fields to students at risk of dropping out of school and to students not motivated by the regular educational curriculum. Further, the Legislature finds the partnership academies can make a very positive contribution towards meeting the needs of the state

for a highly skilled and educated work force in the 21st century.

(c) Therefore, the Legislature hereby states its intent to expand the number of partnership academies in this state's high schools, hereafter to be known as California Partnership Academies; to broaden the availability of these learning experiences to interested students who do not meet the full criteria of "at-risk" students; and to encourage the establishment of academies whose occupational fields address the needs of developing technologies.

(d) For purposes of this article, "at-risk" students means students enrolled in high school who are at risk of dropping out of school, as indicated by at least three of the following criteria:

(1) Past record of irregular attendance.

(2) Past record of underachievement in which the student is at least one year behind the coursework for the respective grade level.

(3) Past record of low motivation or a disinterest in the regular school program.

(4) Disadvantaged economically.

(e) The State Department of Education may expend no more than five percent of the funds received to carry out this article on administrative expenses.

SEC. 3. Section 54691 of the Education Code is amended to read:

54691. Commencing with the 1993–94 fiscal year, from the funds appropriated for that purpose, the Superintendent of Public Instruction shall issue grants to school districts maintaining high schools that meet the specifications of Section 54692, for purposes of planning, establishing, and maintaining academies, as follows:

(a) For the 1993–94, 1994–95, 1995–96, and 1996–97 fiscal years, the superintendent may issue a maximum of 100 grants per year, for purposes of planning partnership academies. The Superintendent of Public Instruction, when issuing the grants to school districts, shall ensure that the grants are equitably distributed among high-wealth and low-wealth school districts in urban, rural, and suburban areas. Each planning grant shall be in the amount of fifteen thousand dollars ($15,000).

(b) For the 1993–94 fiscal year, and each fiscal year thereafter, the superintendent may issue grants for the implementation and maintenance of existing academies or academies planned pursuant to subdivision (a). Implementation and maintenance grants shall be calculated in accordance with the following schedule:

(1) Districts operating academies may receive one thousand four hundred dollars ($1,400) per year for each qualified student enrolled in an academy during the first year of that academy's operation, provided that no more than forty-two thousand dollars ($42,000) may be granted to any one academy for the initial year.

(2) Districts operating academies may receive one thousand two hundred dollars ($1,200) for each qualified student enrolled in an academy during the second year of that academy's operation, provided that no more than seventy-two thousand dollars ($72,000) may be granted to any one academy for the second year.

(3) Districts operating academies may receive nine hundred dollars ($900) for each qualified student enrolled in an academy during the third and following years of that academy's operation, provided that no more than eighty-one thousand dollars ($81,000) may be granted to any one academy for each fiscal year.

(c) For purposes of this article, a qualified student is a student meeting the at-risk criteria specified in Section 54690 and who is enrolled in an academy for the 10th, 11th, or 12th grade, obtains 90 percent of the credits each academic year in courses that are required for graduation, and does any of the following:

(1) Successfully completes a school year during the 10th grade with an attendance record of no less than 80 percent.

(2) Successfully completes a school year during the 11th grade with an attendance record of no less than 80 percent.

(3) Successfully graduates after the 12th grade.

A student enrolled in an academy who successfully completes only one semester with regard to enrollment, attendance, and credits within the school year is considered qualified for that semester and the district may receive one-half of the funds specified under subdivision (b) for that student. Students not meeting the at-risk criteria may participate in the academy program and be considered qualified if they meet the other criteria, but these students may not exceed one-third of the participating students.

(d) At the end of each school year, school districts that have been approved to operate academies pursuant to this article shall certify the following information to the Superintendent of Public Instruction:

(1) The operation of each academy in accordance with this article, including Sections 54692 and 54694.

(2) The number of qualified students enrolled during the just completed school year, by grade level, for each academy operated by the district.

(3) The amount of matching funds and the dollar value of in-kind support made available to each academy in accordance with subdivisions (a) and (b) of Section 54692.

(e) The superintendent shall adjust each school district's grant in accordance with the certification made to him or her pursuant to subdivision (d) or in accordance with any discrepancies to the certification that may be revealed by audit. Notwithstanding the provisions of this section, the superintendent may advance up to 50 percent of the funds as he or she deems appropriate to districts that are approved to operate, or plan to operate partnership academies.

(f) Funds granted to school districts pursuant to this article may be expended without regard to fiscal year. However, the funds must be expended for the maintenance and operation of academies.

SEC. 4. Section 54692 of the Education Code is amended to read:

54692. In order to be eligible to receive funding pursuant to this article, a district shall provide all of the following:

(a) An amount equal to a 100 percent match of all funds received

pursuant to this article in the form of direct and in-kind support provided by the district.

(b) An amount equal to a 100 percent match of all funds received pursuant to this article in the form of direct and in-kind support provided by participating companies or other private sector organizations.

(c) An assurance that state funds provided by the partnership academies program shall be used only for the development, operation, and support of partnership academies.

(d) An assurance that each academy will be established as a "school within a school." Academy teachers shall work as a team in planning, teaching, and troubleshooting program activities. Classes in the academy program shall be limited to academy students as specified in subdivision (d). Each participating district shall establish an advisory committee consisting of individuals involved in academy operations, including school district and school administrators, lead teachers, and representatives of the private sector.

(e) Assurance that each academy student will be provided with the following:

(1) Instruction in at least three academic subjects each regular school term that prepares the student for a regular high school diploma. These subjects should contribute to an understanding of the occupational field of the academy.

(2) A "laboratory class" related to the academy's occupational field.

(3) A class schedule that limits the attendance to the classes required in paragraphs (1) and (2) to pupils of the academy. Whenever possible, these classes should be block scheduled in a cluster to provide flexibility to academy teachers. During the 12th grade the number of academic classes may vary.

(4) A mentor from the business community during the pupil's 11th grade year.

(5) An internship or paid job related to the academy's occupational field or work experience to improve employment skills, during the summer following the 11th grade. A student that must attend summer school for purposes of completing graduation requirements is exempt from this paragraph.

(6) Additional motivational activities with private sector involvement to encourage academic and occupational preparation.

(f) Assurance that academy teachers have a common planning period to interchange student and educational information. Whenever practical, the planning period should be in addition to the normal planning period for full-time teachers and be supported as a part of the district's matching funds.

SEC. 5. Section 54693 of the Education Code is amended to read:

54693. The Superintendent of Public Instruction shall establish eligibility criteria for school districts that apply for grants pursuant to this article. When establishing criteria, the superintendent shall consider the commitment and need of the applicant district. The

superintendent may consider district indicators of need such as the number or percent of pupils in poverty or with limited English proficiency, and the dropout rate.

SEC. 6. Section 54694 of the Education Code is amended to read:

54694. The Superintendent of Public Instruction shall develop guidelines with respect to the California Partnership Academies. The guidelines shall include, but not be limited to, enrollment provisions, application procedures, and student eligibility.

SEC. 7. Section 54695 of the Education Code is amended to read:

54695. (a) The ninth grade teachers and counselors in schools maintained by school districts approved to operate academies pursuant to this article shall identify students eligible to participate in an academy.

(b) Teachers and counselors in schools maintained by school districts approved to operate academies pursuant to this article, business representatives, and academy students of academies that are operating in the area shall be encouraged to make presentations to prospective students and their parents.

(c) The staff of each academy shall select students from among those who have expressed an interest in the academy and whose parents or guardians have approved the student's participation.

SEC. 8. Section 54696 of the Education Code is repealed.

SEC. 9. Section 54696 is added to the Education Code, to read:

54696. (a) The Superintendent of Public Instruction shall contract for a four-year independent review of the effectiveness of the newly funded California Partnership Academies. Preliminary results shall be reported after the 1994–95 fiscal year and a final evaluation shall be performed after the 1996–97 fiscal year. These reports shall be made to the Legislature by January 1 following their completion. The independent review shall include, but not be limited to, all of the following:

(1) An analysis of the extent and degree of success of business and industry involvement, including in-kind contributions, mentor services, summer jobs, and assistance in job placement.

(2) The number of students obtaining employment, entering advanced training programs, and enrolling in postsecondary institutions after graduation.

(3) Attendance rates and credits achieved.

(4) The number of students completing their high school education and graduating.

(5) An analysis of the extent to which components of the partnership program have been incorporated into the regular program of the school.

(b) The Legislature finds that each new academy requires technical assistance for the academy team, administrators, teachers, and private sector participants in the multiple aspects of the academy program that differ from the standard high school program. To provide for the transfer of the experiences gained in the operation of currently successful academies to new academies, the

Superintendent of Public Instruction shall develop a technical assistance team whose members have prior involvement in successful academy operation and make their expertise available, as necessary, to each new academy during its first two years of operation.

SEC. 10. It is the intent of the Legislature that funding in future fiscal years for the California partnership academies program established in Article 5 (commencing with Section 54690) of Chapter 9 of Part 29 of the Education Code, be provided in the annual Budget Act. It is further the intent of the Legislature that the Superintendent of Public Instruction continue to include a line item for California Partnership Academies in the superintendent's annual budget report to the Governor and the Legislature.

CHAPTER 575

An act to amend and repeal Section 19613 of, and to add Sections 19613.3 and 19447 to, the Business and Professions Code, relating to horseracing.

[Approved by Governor September 28, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 19613 of the Business and Professions Code is amended to read:

19613. (a) Except as provided in subdivisions (b), (c), (d), (e), and (f), the portion deducted for purses pursuant to this chapter shall be paid to or for the benefit of the horsemen at the racing meeting.

(b) Any association other than a fair that conducts a thoroughbred racing meeting shall pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount equivalent to 1.5 percent of the portion, and for a pension plan for backstretch personnel to be administered by the horsemen's organization, an amount equivalent to an additional 1 percent of the portion. The remainder of the portion shall be distributed as purses.

(c) Any other association may pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount out of the portion as may be determined by the association by agreement or otherwise, but, in all events, shall include, relative to a thoroughbred horsemen's organization, 1 percent of the portion for a pension plan for backstretch personnel to be administered by the horsemen's organization. The remainder of the portion shall be distributed as purses.

(d) Notwithstanding subdivisions (b) and (c), any association conducting a fair racing meeting or conducting a mixed breed racing meeting shall pay to the horsemen's organizations contracting with the association with respect to the conduct of races for their respective breeds of horses at the meetings for administrative expenses and services rendered to their respective horsemen those amounts out of the portion as determined by the horsemen's organization for the respective breeds with the approval of the board.

Pursuant to this subdivision, amounts equivalent to 3 percent of the portion for the horsemen's organization shall be distributed to any thoroughbred horsemen's organizations contracting with an association for a fair racing meeting or participating in mixed breed racing meetings as follows: 1 percent for administrative expenses and services rendered to their respective horsemen, 1 percent for welfare funds, and 1 percent for a pension program for backstretch personnel, to be administered by the thoroughbred horsemen's organizations.

(e) Any association other than a fair that conducts a quarter horse racing meeting, except a mixed breed meeting, shall pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount equal to its expenses, but not to exceed 3 percent of the portion. The remainder of the portion shall be distributed as purses.

(f) For racing meetings other than thoroughbred meetings, if no contract has been signed between the association conducting the racing meeting and the organization representing the horsemen by the time the racing meeting commences, the distribution of purses shall be governed by the following:

(1) If the association conducted a racing meeting within the past 15 months and a contract was in existence for that meeting with the horsemen's organization and the association is conducting a subsequent meeting for the same breed or mixed breeds, the amounts payable to the horsemen's organization under subdivision (c) shall be computed under the provisions of the last signed contract between the parties.

(2) This subdivision applies regardless of the cause of the failure to execute a contract, whether that failure is a result of inadvertence or otherwise.

(3) For racing meetings which do not come within paragraph (1), the board shall, within 20 days after the commencement of the racing meeting, determine the amounts payable to the horsemen's organization for administrative expenses and services, and provide for the direct payment of those amounts.

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

SEC. 2. Section 19613.3 is added to the Business and Professions

Code, to read:

19613.3. Each horsemen's association shall provide for the representation of owners and trainers on its board of directors. The provisions setting forth the composition of the board of directors of each association shall be in the bylaws of the organization and shall be submitted to the board. The bylaws and any changes thereto shall be approved by the board.

SEC. 3. Section 19447 is added to the Business and Professions Code, to read:

19447. If a question of consent is appealed to the board under subdivision (a) of Section 19601 or subdivision (f) of Section 19605.3, the board shall hold a hearing on the appeal. Notwithstanding any other provision of law, the board may hold a hearing pursuant to this section within 24 hours of noticing the hearing.

CHAPTER 576

An act to add Section 667.70 to the Penal Code, relating to sentencing.

[Approved by Governor September 28, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 667.70 is added to the Penal Code, to read:

667.70. Any person who is convicted of murder and sentenced pursuant to paragraph (1) of subdivision (a) of Section 667.7 shall be eligible only for credit pursuant to subdivisions (a), (b), and (c) of Section 2931.

SEC. 2. It is the intent of the Legislature, in enacting this measure, that there shall be no lessening of the minimum term of imprisonment for any person whose qualifying conviction is for murder and who otherwise would be sentenced under Section 190 of the Penal Code.

CHAPTER 577

An act to amend, repeal, and add Section 19601 of the Business and Professions Code, relating to horseracing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1993. Filed with Secretary of State September 28, 1993.]

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

SECTION 1. Section 19601 of the Business and Professions Code is amended to read:

19601. (a) Notwithstanding any other provision of law, a licensed association or fair that is conducting a live meeting in any racing zone may accept wagers on any featured race conducted in this state having a gross purse of twenty thousand dollars ($20,000) or more, if all of the following requirements are met:

(1) The association or fair that conducts the featured race and the association or fair that accepts wagers on that race have executed an agreement providing for the conditions for transmission of the audiovisual signal of the featured race and the amount of compensation, if any, to be paid to the association or fair conducting the featured race.

(2) The association or fair that conducts the racing meeting with the featured race and the horsemen's organization that represents the horsemen participating in that racing meeting consent to the acceptance of the wagers. However, if consent is withheld, any party may appeal the withholding of consent to the board, which may determine that consent is not required.

(3) Wagering is offered only within the association or fair's racing inclosure or within the satellite wagering facility and only within seven days of the commencement of the racing program with the featured race.

(4) All wagers are included in a board approved parimutuel pool at the racetrack of the association or fair that accepts the featured race.

(5) The association or fair accepting wagers on an out-of-zone featured race distributes the audiovisual signal of the race to, and accepts wagers from, all eligible satellite wagering facilities.

(b) Any association or fair accepting wagers under subdivision (a) shall deduct from the total amount handled in each conventional and exotic parimutuel pool on the featured race, the same percentages deducted pursuant to Article 9.5 (commencing with Section 19610) for races at its own meeting. Amounts deducted under this section shall be distributed as provided under Section 19605.7 with respect to wagers made within the northern zone, or Section 19605.71 with respect to wagers made within the central or southern zone, except

that amounts distributed for purposes other than state license fees, fees payable to a city, county, or city and county, and fees payable to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis, and the California Diagnostic Veterinary Lab System shall be proportionally reduced by the amount paid as compensation to the association or fair conducting the featured race. The method used to calculate the reduction in proportionate share shall be approved by the board. For wagers on out-of-zone featured races made within the association or fair's inclosure, the percentage amount normally distributed as a satellite wagering facility commission, less any pro rata reduction required by this subdivision, shall be distributed instead as additional commissions and purses pursuant to Section 19605.8.

(c) Any compensation received by the association or fair that conducts the featured race shall be divided equally between commissions and purses.

(d) All breakage and unclaimed tickets, including cash vouchers, shall be distributed equally among the state, the association or fair that accepts wagers on the featured race, and the horsemen, in the form of purses, who participate in the racing meeting of the association or fair that accepts wagers on the featured race.

(e) This section shall remain in effect only until July 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1994, deletes or extends that date.

SEC. 2. Section 19601 is added to the Business and Professions Code, to read:

19601. (a) Notwithstanding any other provision of law, the board may authorize any licensed association or satellite wagering facility to accept wagers on races conducted in this state comprising the program of racing generally known as the Breeders' Cup and feature races conducted in this state having a gross purse of fifty thousand dollars ($50,000) or more, if all of the following requirements are met:

(1) The association that conducts the racing meeting with the Breeders' Cup program or the feature race having a gross purse of fifty thousand dollars ($50,000) or more and the horsemen's organization that represents the horsemen participating in that racing meeting consent to the acceptance of the wagers.

(2) Wagering is offered only within the association's racing inclosure or within the satellite wagering facility and only within seven days of the commencement of the racing program with the Breeders' Cup program or with the feature race having a gross purse of fifty thousand dollars ($50,000) or more.

(3) All wagers made at the association or at the satellite wagering facility that accepts the wagers are included in the appropriate conventional or exotic pool at the racetrack of the association that conducts the racing meeting with the Breeders' Cup program or the feature race having a gross purse of fifty thousand dollars ($50,000) or more, unless the board determines that including the wagers in

pools of the association or the satellite wagering facility that accepts the wagers better serves the purpose of this chapter.

(b) Any association or satellite wagering facility accepting wagers under subdivision (a) shall deduct from the total amount handled in each conventional and exotic parimutuel pool, the same percentages deducted pursuant to Article 9.5 (commencing with Section 19610) by the association that conducts the racing meeting with the Breeders' Cup program or the feature race having a gross purse of fifty thousand dollars ($50,000) or more.

(c) From the total amount deducted pursuant to subdivision (b), a commission of 2 percent of the amount it handles shall be retained by the association or the satellite wagering facility that accepts the wager. The funds remaining after distribution of the 2-percent commission shall be distributed in the same relative percentages (reduced pro rata for the 2-percent commission) as provided in Article 9.5 (commencing with Section 19610), except that the funds available for distribution to the association that conducts the racing meeting with the Breeders' Cup program or the feature race having a gross pool of fifty thousand dollars ($50,000) or more and for distribution to horsemen, in the form of purses, shall be accumulated and shall be distributed equally between (1) the association that conducts the racing meeting with the Breeders' Cup program or the feature race having a gross purse of fifty thousand dollars ($50,000) or more and (2) the horsemen, in the form of purses. One-half of the purse money shall be paid to the horsemen who participate in the racing meeting with the Breeders' Cup program or the feature race having a gross purse of fifty thousand dollars ($50,000) or more, and one-half of the purse money shall be paid in the form of purses to the horsemen who are racing at an association that conducts the same breed of racing as the association that conducts the Breeders' Cup program or a feature race having a gross purse of fifty thousand dollars ($50,000) or more.

(d) All breakage and unclaimed tickets shall be distributed equally among the state, the association that conducts the racing meeting with the Breeders' Cup program or the feature race having a gross purse of fifty thousand dollars ($50,000) or more, and the horsemen, in the form of purses, who participate in the racing meeting with the Breeders' Cup program or the feature race having a gross purse of fifty thousand dollars ($50,000) or more.

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

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

In order for the provisions of this act to apply to the current racing season, it is necessary that this act take effect immediately.

CHAPTER 578

An act to amend Section 44011.6 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 28, 1993. Filed with Secretary of State September 29, 1993.]

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

SECTION 1. Section 44011.6 of the Health and Safety Code is amended to read:

44011.6. (a) (1) As expeditiously as possible, the state board shall develop a test procedure for the detection of excessive smoke emissions from heavy-duty diesel motor vehicles that is feasible for use in an intermittent roadside inspection program. During the development of the test procedure, the state board shall cooperate with the Department of the California Highway Patrol in conducting roadside inspections.

(2) The state board may also specify visual or functional inspection procedures to determine the presence of tampering or defective emissions control systems in heavy-duty diesel or heavy-duty gasoline motor vehicles. However, visual or functional inspection procedures for heavy-duty gasoline motor vehicles shall not be more stringent than those prescribed by the department for heavy-duty gasoline motor vehicles subject to biennial inspection pursuant to Section 44013.

(3) The chairperson of the state board shall appoint an ad hoc advisory committee which shall include, but not be limited to, representatives of heavy-duty engine manufacturers, carriers of property for compensation using heavy-duty gasoline or diesel motor vehicles, and the Department of the California Highway Patrol. The advisory committee shall cooperate with the state board to develop a test procedure pursuant to this subdivision and shall advise the state board in developing regulations to implement test procedures and inspection of heavy-duty commercial motor vehicles.

(b) Any smoke testing procedures or smoke measuring equipment, including any meter that measures smoke opacity or density and any recorder that stores or records smoke opacity or density measurements, used to test for compliance with this section and regulations adopted pursuant to this section, shall produce consistent and repeatable results. The requirements of this subdivision shall be satisfied by the adoption of Society of Automotive Engineers recommended practice J 1667, "Snap-Acceleration Smoke Test Procedures for Heavy-Duty Diesel Powered Vehicles."

(c) (1) The smoke test standards and procedures adopted and implemented pursuant to this section shall be designed to ensure that no engine will fail the smoke test standards and procedures

adopted under this section when the engine is in good operating condition and is adjusted to the manufacturer's specifications.

(2) In implementing this section, the state board shall immediately adopt procedures that either ensure that there will be no false failures or that ensure that the state board will remedy any false failures without any penalty to the vehicle owner.

(d) The state board shall, by regulation, prohibit the use of heavy-duty motor vehicles which are determined to have excessive smoke emissions or other emissions-related defects, using the test procedure established pursuant to this section.

(e) The state board may issue a citation to the owner or operator for any vehicle in violation of the regulations adopted under this section. The regulations may require the operator of a vehicle to submit to a test procedure adopted pursuant to subdivision (a), may specify that refusal to so submit is a violation of the regulations, and shall require that, when a citation has been issued, the owner of a vehicle in violation of the regulations shall, within 45 days, correct every deficiency specified in the citation.

(f) The department may develop criteria for one or more classes of smog check stations capable of determining compliance with regulations adopted pursuant to this section and may authorize those stations to issue certificates of compliance to vehicles in compliance with the regulations. The department may contract for the operation of smog check stations for heavy-duty vehicles pursuant to this subdivision, and only heavy-duty vehicles may be inspected at those stations.

(g) In addition to the corrective action required by this section, the owner of a motor vehicle in violation of the regulations adopted pursuant to this section is subject to a civil penalty of not more than one thousand five hundred dollars ($1,500) per day for each day that the vehicle is in violation. The state board may adopt a schedule of reduced civil penalties to be applied in cases where violations are corrected in an expeditious manner. The schedule of reduced civil penalties shall not, however, apply where there have been repeated incidents of emissions control system tampering. All civil penalties imposed pursuant to this subdivision shall be collected by the state board and deposited in the Vehicle Inspection and Repair Fund. Funds in the Vehicle Inspection and Repair Fund shall, when appropriated by the Legislature, be available to the state board and the Department of the California Highway Patrol for the conduct of intermittent roadside inspections of heavy-duty vehicles pursuant to this section.

(h) Following the adoption of regulations pursuant to this section, the state board and the Department of the California Highway Patrol shall commence inspecting heavy-duty motor vehicles. With the concurrence of the Department of the California Highway Patrol, these inspections may be conducted in conjunction with the safety and weight enforcement activities of the Department of the California Highway Patrol or at other locations selected by the state

board or the Department of the California Highway Patrol. Inspection locations may include private facilities where fleet vehicles are serviced or maintained. The state board and the Department of the California Highway Patrol may conduct these inspections either cooperatively or independently, and the state board may contract for assistance in the conduct of these inspections.

(i) The state board shall inform the Department of the California Highway Patrol whenever a vehicle owner cited pursuant to this section fails to take a required corrective action or to pay a civil penalty levied pursuant to subdivisions (g) and (k) in a timely manner. Following notice and opportunity for an administrative hearing pursuant to subdivision (*l*), the state board may request the Department of the California Highway Patrol to remove the vehicle from service and order the vehicle stored. Upon notification from the state board of payment of any civil penalties imposed under subdivision (g) and storage and related charges, the vehicle shall be released to the owner or designee. Upon release of the vehicle, the owner or designee shall correct every deficiency specified in any citation to that owner with respect to the vehicle.

(j) The state board, in consultation with the Department of the California Highway Patrol, shall, within two years of the adoption of regulations pursuant to this section, prepare and submit to the Legislature a report on the smoke emissions enforcement program conducted under this section, including, but not limited to, its assessment of the effectiveness of the program, the impact of the program on the operations of the Department of the California Highway Patrol, and its recommendations for changes in, alternatives to, or termination of, the program.

(k) In addition to the corrective action required by subdivision (e), and in addition to the civil penalty imposed by subdivision (g), the owner of a motor vehicle cited by the state board pursuant to this section shall pay a civil penalty of three hundred dollars ($300) per citation; except that this penalty shall not apply to the first citation for any schoolbus. All civil penalties imposed pursuant to this subdivision shall be collected by the state board and deposited in the Diesel Emission Reduction Fund, which fund is hereby created. Funds in the Diesel Emission Reduction Fund shall, when appropriated by the Legislature, be available to the State Energy Resources Conservation and Development Commission for research, development, and demonstration programs undertaken pursuant to Section 24617 of the Public Resources Code.

(*l*) The state board shall adopt regulations that afford an owner cited under this section an opportunity for an administrative hearing. Any owner cited under this section may request an administrative hearing within 45 days following either personal receipt or certified mail receipt of the citation. If the owner fails to request an administrative hearing within 45 days, the citation shall be deemed a final order and not subject to review by any court or agency. If the owner requests an administrative hearing and fails to seek review by

administrative mandamus pursuant to Section 1094.5 of the Code of Civil Procedure within 60 days after the mailing of the administrative hearing decision, the decision shall be deemed a final order and not subject to review by any other court or agency. The 45-day period may be extended by the administrative hearing officer for good cause.

(m) Following exhaustion of the review procedures provided for in subdivision (*l*), the state board may apply to the Superior Court of Sacramento County for a judgment in the amount of the civil penalty. The application, which shall include a certified copy of the final order of the administrative hearing officer, shall constitute a sufficient showing to warrant the issuance of the judgment.

CHAPTER 579

An act to amend Section 39510 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 28, 1993. Filed with Secretary of State September 29, 1993.]

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

SECTION 1. Section 39510 of the Health and Safety Code, as amended by Chapter 1201 of the Statutes of 1991, is amended to read:

39510. (a) The State Air Resources Board is continued in existence in the California Environmental Protection Agency. The state board shall consist of 11 members.

(b) The members shall be appointed by the Governor, with the consent of the Senate, on the basis of their demonstrated interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with air pollution problems. Six members shall have the following qualifications:

(1) One member shall have training and experience in automotive engineering or closely related fields.

(2) One member shall have training and experience in chemistry, meteorology, or related scientific fields, including agriculture or law.

(3) One member shall be a physician and surgeon or an authority on health effects of air pollution.

(4) Two members shall be public members.

(5) One member shall have the qualifications specified in paragraph (1), (2), or (3) or shall have experience in the field of air pollution control.

(c) Five members shall be board members from districts who shall reflect the qualitative requirements of subdivision (b) to the extent practicable. Of these five members, one shall be a board member from the south coast district, one shall be a board member

from the bay district, one shall be a board member from the San Joaquin Valley Unified Air Pollution Control District or, if the unified district is abolished, from the San Joaquin Valley Air Quality Management District if created pursuant to Section 41101, one shall be a board member from the San Diego County Air Pollution Control District, and one shall be a board member of any other district.

(d) Any vacancy shall be filled by the Governor within 30 days of the date on which it occurs. If the Governor fails to make an appointment for any vacancy within the 30-day period, the Senate Committee on Rules may make the appointment to fill the vacancy in accordance with this section.

(e) While serving on the state board, all members shall exercise their independent judgment as officers of the state on behalf of the interests of the entire state in furthering the purposes of this division. No member of the state board shall be precluded from voting or otherwise acting upon any matter solely because that member has voted or acted upon the matter in his or her capacity as a member of a district board, except that no member of the state board who is also a member of a district board shall participate in any action regarding his or her district taken by the state board pursuant to Sections 41503 to 41505, inclusive.

(f) Notwithstanding subdivision (e) of Section 1 of Chapter 1201 of the Statutes of 1991, this section shall become operative on January 1, 1994.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 580

An act to add Section 12945.1 to the Government Code, to add Sections 6317.5 and 6317.7 to the Labor Code, and to amend Section 1 of Chapter 462 of the Statutes of 1991, relating to employment.

[Approved by Governor September 28, 1993. Filed with Secretary of State September 29, 1993.]

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

SECTION 1. Section 12945.1 is added to the Government Code, to read:

12945.1. Sections 12945.2 and 19702.3 shall be known, and may be cited, as the Moore-Brown-Roberti Family Rights Act.

SEC. 2. Section 6317.5 is added to the Labor Code, to read:

6317.5. (a) If, upon inspection or investigation, the division finds that an employer has falsified any materials posted in the workplace or distributed to employees related to the California Occupational Safety and Health Act, the division shall issue a citation to the employer.

(b) Each citation issued pursuant to this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the director.

(c) Any employer served with a citation pursuant to subdivision (a) may appeal to the appeals board pursuant to the provisions of Chapter 7 (commencing with Section 6600). The appeal shall be subject to the timeframes and procedures set forth in that chapter.

(d) The provisions of this section are in addition to, and not in lieu of, all other criminal penalties and civil remedies that may be applicable to any act leading to issuance of a citation pursuant to this section.

SEC. 3. Section 6317.7 is added to the Labor Code, to read:

6317.7. If, upon inspection or investigation, the division finds no violations pursuant to this chapter, the division with reasonable promptness shall issue a written notice to the employer specifying the areas inspected and stating that no violations were found.

The director shall prescribe procedures for the issuance of this notice.

SEC. 4. Section 1 of Chapter 462 of the Statutes of 1991 is amended to read:

Sec. 1. This act shall be known, and may be cited, as the Moore-Brown-Roberti Family Rights Act.

CHAPTER 581

An act to amend Sections 646.9 and 2684 of the Penal Code, relating to stalking.

[Approved by Governor September 28, 1993. Filed with Secretary of State September 29, 1993.]

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

SECTION 1. Section 646.9 of the Penal Code is amended to read:

646.9. (a) Any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) Every person who, having been convicted of a felony under this section, commits a second or subsequent violation of this section shall be punished by imprisonment in the state prison for two, three, or four years.

(d) For the purposes of this section, "harasses" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, torments, or terrorizes the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(e) For the purposes of this section, "credible threat" means a verbal or written threat or a threat implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family.

(f) This section shall not apply to conduct which occurs during labor picketing.

(g) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(h) The court shall also consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family. The duration of the restraining order may be longer than five years only in an extreme case, where a longer duration is necessary to protect the safety of the victim or his or her immediate family.

(i) For purposes of this section, "immediate family" means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(j) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be

appropriate, the court shall recommend that the Department of Corrections make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

SEC. 2. Section 2684 of the Penal Code is amended to read:

2684. (a) If, in the opinion of the Director of Corrections, the rehabilitation of any mentally ill, mentally deficient, or insane person confined in a state prison may be expedited by treatment at any one of the state hospitals under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the Director of Corrections, with the approval of the Board of Prison Terms for persons sentenced pursuant to subdivision (b) of Section 1168, shall certify that fact to the director of the appropriate department who shall evaluate the prisoner to determine if he or she would benefit from care and treatment in a state hospital. If the director of the appropriate department so determines, the superintendent of the hospital shall receive the prisoner and keep him or her until in the opinion of the superintendent the person has been treated to the extent that he or she will not benefit from further care and treatment in the state hospital.

(b) Whenever the Director of Corrections receives a recommendation from the court that a defendant convicted of a violation of Section 646.9 and sentenced to confinement in the state prison would benefit from treatment in a state hospital pursuant to subdivision (a), the director shall consider the recommendation. If appropriate, the director shall certify that the rehabilitation of the defendant may be expedited by treatment in a state hospital and subdivision (a) shall apply.

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

CHAPTER 582

An act to add Section 1708.7 to the Civil Code, relating to exemplary damages.

[Approved by Governor September 28, 1993. Filed with Secretary of State September 29, 1993.]

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

SECTION 1. Section 1708.7 is added to the Civil Code, to read:

1708.7. (a) A person is liable for the tort of stalking when the plaintiff proves all the following elements of the tort:

(1) The defendant engaged in a pattern of conduct the intent of which was to follow, alarm, or harass the plaintiff. In order to establish this element, the plaintiff shall be required to support his or her allegations with independent corroborating evidence.

(2) As a result of that pattern of conduct, the plaintiff reasonably feared for his or her safety, or the safety of an immediate family member. For purposes of this paragraph, "immediate family" means a spouse, parent, child, any person related by consanguinity or affinity within the second degree who resides in the plaintiff's household, or any person who regularly resides, or, within the six months preceding any portion of the pattern of conduct, regularly resided, in the plaintiff's household.

(3) One of the following:

(A) The defendant made a credible threat with the intent to place the plaintiff in reasonable fear for his or her safety, or the safety of an immediate family member and, on at least one occasion, the plaintiff clearly and definitively demanded that the defendant cease and abate his or her pattern of conduct and the defendant persisted in his or her pattern of conduct. For purposes of this section, "credible threat" means a verbal or written threat or a threat implied by a pattern of conduct, or a combination of verbal or written statements and conduct, made with the intent and apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of an immediate family member.

(B) The defendant violated a restraining order, including, but not limited to, any order issued pursuant to Section 527.6 of the Code of Civil Procedure, prohibiting any act described in subdivision (a).

(b) A person who commits the tort of stalking upon another is liable to that person for damages, including, but not limited to, general damages, special damages, and punitive damages.

(c) In an action pursuant to this section, the court may grant equitable relief, including, but not limited to, an injunction.

(d) The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

(e) This section shall not be construed to impair any constitutionally protected activity, including, but not limited to, speech, protest, and assembly.

CHAPTER 583

An act to amend Section 527 of the Code of Civil Procedure, to amend Section 6222 of the Family Code, and to amend Sections 166, 273.6, and 602 of the Penal Code, relating to stalking.

[Approved by Governor September 28, 1993. Filed with Secretary of State September 29, 1993.]

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

SECTION 1. Section 527 of the Code of Civil Procedure, as amended by Section 23 of Chapter 163 of the Statutes of 1992, is amended to read:

527. (a) An injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor. A copy of the complaint or of the affidavits, upon which the injunction was granted, must, if not previously served, be served therewith.

A temporary restraining order or a preliminary injunction, or both, may be granted in a class action, in which one or more of the parties sues or defends for the benefit of numerous parties upon the same grounds as in other actions, whether or not the class has been certified.

No preliminary injunction shall be granted without notice to the opposite party; nor shall any temporary restraining order be granted without notice to the opposite party, unless (1) it shall appear from facts shown by affidavit or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice and (2) the applicant or the applicant's attorney certifies to the court under oath (A) that within a reasonable time prior to the application he or she informed the opposing party or his or her attorney at what time and where the application would be made; (B) that he or she in good faith attempted to inform the opposing party and his or her attorney but was unable to so inform the opposing party or his or her attorney, specifying the efforts made to contact them; or (C) that for reasons specified he or she should not be required to so inform the opposing party or his or her attorney. In case a temporary restraining order shall be granted without notice, in the contingency above specified, the matter shall be made returnable on an order requiring cause to be shown why the injunction should not be granted, on the earliest day that the business of the court will admit of, but not later than 15

days or, if good cause appears to the court, 20 days from the date of the order. When the matter first comes up for hearing the party who obtained the temporary restraining order must be ready to proceed and must have served upon the opposite party at least two days prior to the hearing, a copy of the complaint and of all affidavits to be used in the application and a copy of the points and authorities in support of the application; if the party is not ready, or if he or she fails to serve a copy of his or her complaint, affidavits and points and authorities, as herein required, the court shall dissolve the temporary restraining order. The defendant, however, shall be entitled, as of course, to one continuance for a reasonable period, if he or she desires it, to enable him or her to meet the application for the preliminary injunction. The defendant may, in response to an order to show cause, present affidavits relating to the granting of the preliminary injunction, and if the affidavits are served on the applicant at least two days prior to the hearing, the applicant shall not be entitled to any continuance on account thereof. On the day upon which the order is made returnable, the hearing shall take precedence of all other matters on the calendar of the day, except older matters of the same character, and matters to which special precedence may be given by law. When the cause is at issue it shall be set for trial at the earliest possible date and shall take precedence of all other cases, except older matters of the same character, and matters to which special precedence may be given by law.

(b) This section does not apply to an order described in Section 240 of the Family Code.

(c) There shall be no filing fee for a petition or response relating to a protective order, restraining order, or a permanent injunction restraining violence or threats of violence in any action brought pursuant to this chapter.

SEC. 2. Section 6222 of the Family Code, as added by Chapter 219 of the Statutes of 1993, is amended to read:

6222. (a) There is no filing fee for a petition, response, or modification of a protective order filed in a proceeding brought pursuant to this division.

(b) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this division may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver.

(c) The declaration required by subdivision (b) shall be on one of the following forms:

(1) The form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner is not subject to any other requirements of litigants proceeding in forma pauperis.

(2) Any other form that the Judicial Council may adopt for this purpose pursuant to Section 6226.

(d) In conjunction with a hearing pursuant to this division, the court may make an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order issued under this division.

SEC. 3. Section 166 of the Penal Code is amended to read:

166. (a) Except as provided in subdivision (b), every person guilty of any contempt of court, of any of the following kinds, is guilty of a misdemeanor:

(1) Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(2) Behavior as specified in paragraph (1) committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

(3) Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court.

(4) Willful disobedience of any process or order lawfully issued by any court.

(5) Resistance willfully offered by any person to the lawful order or process of any court.

(6) The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

(7) The publication of a false or grossly inaccurate report of the proceedings of any court.

(8) Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of the court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as provided in this code.

(b) (1) Any person who is guilty of contempt of court under paragraph (4) of subdivision (a) by willfully contacting a victim by phone, mail, or directly and who has been previously convicted of a violation of Section 646.9 shall be punished by imprisonment in a county jail for not more than one year, by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(2) For the purposes of sentencing under this subdivision, each contact shall constitute a separate violation of this subdivision.

(3) The present incarceration of a person who makes contact with a victim in violation of paragraph (1) is not a defense to a violation of this subdivision.

SEC. 4. Section 166 of the Penal Code is amended to read:

166. (a) Except as provided in subdivisions (b) and (c), every person guilty of any contempt of court, of any of the following kinds, is guilty of a misdemeanor:

(1) Disorderly, contemptuous, or insolent behavior committed

during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(2) Behavior as specified in paragraph (1) committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

(3) Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court.

(4) Willful disobedience of any process or order lawfully issued by any court.

(5) Resistance willfully offered by any person to the lawful order or process of any court.

(6) The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

(7) The publication of a false or grossly inaccurate report of the proceedings of any court.

(8) Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of the court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as provided in this code.

(b) (1) Any person who is guilty of contempt of court under paragraph (4) of subdivision (a) by willfully contacting a victim by phone, mail, or directly and who has been previously convicted of a violation of Section 646.9 shall be punished by imprisonment in a county jail for not more than one year, by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(2) For the purposes of sentencing under this subdivision, each contact shall constitute a separate violation of this subdivision.

(3) The present incarceration of a person who makes contact with a victim in violation of paragraph (1) is not a defense to a violation of this subdivision.

(c) (1) Notwithstanding paragraph (4) of subdivision (a), any willful and knowing violation of any protective order or stay away court order issued pursuant to Section 136.2, in a pending criminal proceeding involving domestic violence, as defined in Section 13700, or issued as a condition of probation after a conviction in a criminal proceeding involving domestic violence, as defined in Section 13700, which is an order described in paragraph (3), shall constitute contempt of court, a misdemeanor, punishable by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and the fine.

(2) If a violation of paragraph (1) results in a physical injury, the person shall be imprisoned in a county jail for at least 48 hours, whether a fine or imprisonment is imposed, or the sentence is

suspended.

(3) Paragraphs (1) and (2) shall apply to the following court orders:

(A) An order enjoining any party from molesting, attacking, striking, threatening, sexually assaulting, battering, harassing, contacting repeatedly by mail with the intent to harass, or disturbing the peace of the other party, or other named family and household members.

(B) An order excluding one party from the family dwelling or from the dwelling of the other.

(C) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the orders described in paragraph (1).

(4) A second or subsequent conviction for a violation of any order described in paragraph (1) occurring within seven years of a prior conviction for a violation of any of those orders and involving an act of violence or "a credible threat" of violence, as provided in subdivisions (c) and (d) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months or two or three years.

(5) The prosecuting agency of each county shall have the primary responsibility for the enforcement of the orders described in paragraph (1).

(d) (1) If probation is granted upon conviction of a violation of subdivision (c), the court shall require participation in a batterer's treatment program as a condition of probation, unless, considering all of the facts and circumstances, the court finds participating in a batterer's treatment program inappropriate for the defendant.

(2) If probation is granted upon conviction of a violation of subdivision (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars ($1,000).

(B) That the defendant provide restitution to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(3) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision or subdivision (c), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support.

(4) Where the injury to a married person is caused in whole or part by the criminal acts of his or her spouse in violation of subdivision (c), the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, or to a shelter for costs

with regard to the injured spouse and dependents, required by this subdivision, until all separate property of the offending spouse is exhausted.

(5) Any person violating any order described in subdivision (c), may be punished for any substantive offenses described under Section 136.1 or 646.9. No finding of contempt shall be a bar to prosecution for a violation of Section 136.1 or 646.9. However, any person held in contempt for a violation of subdivision (c) shall be entitled to credit for any punishment imposed as a result of that violation against any sentence imposed upon conviction of an offense described in Section 136.1 or 646.9. Any conviction or acquittal for any substantive offense under Section 136.1 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the same act.

SEC. 5. Section 273.6 of the Penal Code, as amended by Chapter 219 of the Statutes of 1993, is amended to read:

273.6. (a) Any willful and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Sections 527 or 527.6 of the Code of Civil Procedure is a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment.

(b) If a violation of an order described in subdivision (a) results in a physical injury, the person shall be imprisoned in a county jail for at least 48 hours, whether a fine or imprisonment is imposed or the sentence is suspended.

(c) A second or subsequent conviction for a violation of an order described in subdivision (a) occurring within seven years of a prior conviction for a violation of the order and involving an act of violence or "a credible threat" of violence as defined in subdivision (c) of Section 139 is punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months or two or three years.

(d) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders issued pursuant to subdivisions (a), (b), and (c).

(e) If probation is granted upon conviction of a violation of subdivision (a), (b), or (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars ($1,000).

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(f) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or

court ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 6. Section 273.6 of the Penal Code, as amended by Chapter 219 of the Statutes of 1993, is amended to read:

273.6. (a) Any willful and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Sections 527 or 527.6 of the Code of Civil Procedure is a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment.

(b) If a violation of an order described in subdivision (a) results in physical injury, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than six months nor more than one year, or by both the fine and imprisonment, or by imprisonment in the state prison for 16 months, or two or three years. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interests of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) A second or subsequent conviction for a violation of an order described in subdivision (a) occurring within seven years of a prior conviction for a violation of the order and involving an act of violence or "a credible threat" of violence as defined in subdivision (c) of Section 139 is punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months, or two or three years.

(d) In the event of a second or subsequent violation of subdivision (a) resulting in a conviction occurring within one year of a prior conviction for a violation of the order that results in physical injury to the same victim, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than six months nor more than one year, or by both the fine and imprisonment, or by imprisonment in the state prison for 16 months, or two or three years. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interests of justice and for reasons stated in the record, reduce or

eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(e) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders issued pursuant to subdivisions (a), (b), (c), and (d).

(f) The court may order a person convicted under this section to undergo counseling, and if appropriate, to complete a batterer's treatment program.

(g) If probation is granted upon conviction of a violation of subdivision (a), (b), (c), or (d), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars ($1,000).

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(f) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 7. Section 602 of the Penal Code is amended to read:

602. Notwithstanding Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any such lands, whether covered by water or not, without the license of the owner or legal occupant; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any such lands.

(h) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(i) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(j) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(k) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written

permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(*l*) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(m) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to or lawfully occupied by another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession.

(n) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or

ordinance.

(o) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(p) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances are such as to indicate to a reasonable person that the person has no apparent lawful business to pursue.

(q) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(r) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(s) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(t) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) "Airport operations area" means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) "Authorized personnel" means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) "Airport" means any facility whose function is to support commercial aviation.

(u) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

SEC. 7.5. Section 602 of the Penal Code is amended to read:

602. Except as provided in Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town

or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any such lands, whether covered by water or not, without the license of the owner or legal occupant; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any such lands.

(h) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(i) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(j) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(k) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(*l*) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(m) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process.

(n) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(o) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads

and trails passing through the lands.

(p) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances are such as to indicate to a reasonable person that the person has no apparent lawful business to pursue.

(q) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(r) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(s) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(t) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) "Airport operations area" means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) "Authorized personnel" means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) "Airport" means any facility whose function is to support commercial aviation.

(u) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

SEC. 8. Section 4 of this bill incorporates amendments to Section 166 of the Penal Code proposed by both this bill and AB 303. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 166 of the Penal Code, and (3) this bill is enacted after AB 303, in which case Section 3 of this bill shall not become operative.

SEC. 9. Section 6 of this bill incorporates amendments to Section 273.6 of the Penal Code proposed by both this bill and SB 739. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 166 of the Penal Code, and (3) this bill is enacted after SB 739, in which case Section 5 of this bill shall not become operative.

SEC. 10. Section 7.5 of this bill incorporates amendments to Section 602 of the Penal Code proposed by both this bill and AB 504. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 602 of the Penal Code, and (3) this bill is enacted after AB 504, in which case Section 7 of this bill shall not become operative.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless

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

CHAPTER 584

An act to amend, repeal, and add Section 400 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 28, 1993. Filed with Secretary of State September 29, 1993.]

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

SECTION 1. The Legislature does not intend that the enactment of this bill be interpreted to indicate that the Legislature supports or endorses any repeal or alteration of the existing provisions of Section 27803 of the Vehicle Code which require the wearing of a helmet while riding a motorcycle.

SEC. 2. Section 400 of the Vehicle Code is amended to read:

400. (a) A "motorcycle" is any motor vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three wheels in contact with the ground, and weighing less than 1,500 pounds.

(b) A motor vehicle that has four wheels in contact with the ground, two of which are a functional part of a sidecar, is a motorcycle if the vehicle otherwise comes within the definition of subdivision (a).

(c) A motor vehicle that is electrically powered, has a maximum speed of 45 miles per hour, and weighs less than 2,500 pounds, is a motorcycle if the vehicle otherwise comes within the definition of subdivision (a).

(d) A farm tractor is not a motorcycle.

(e) A motor vehicle that otherwise meets the requirements of subdivision (a), has a partially or completely enclosed seating area for the driver and passenger, and is used by local public agencies for the enforcement of parking control provisions, is not a motorcycle.

(f) This section shall become inoperative if the Director of Transportation receives notice of a determination by the National Highway Traffic Safety Administration that the implementation of that provision would subject California to a transfer of funds pursuant to Section 153 of Title 23 of the United States Code.

(g) Upon receipt of a notice of determination from the National Highway Traffic Safety Administration pursuant to subdivision (f), the Director of Transportation shall submit the notice of determination to the Secretary of State, and this section shall be repealed upon receipt of that notice by the Secretary of State.

(h) This section shall remain in effect only until January 1, 1997,

and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 3. Section 400 is added to the Vehicle Code, to read:

400. (a) A "motorcycle" is any motor vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three wheels in contact with the ground, and weighing less than 1,500 pounds.

(b) A motor vehicle that has four wheels in contact with the ground, two of which are a functional part of a sidecar, is a motorcycle if the vehicle otherwise comes within the definition of subdivision (a).

(c) A motor vehicle that is electrically powered, has a maximum speed of 45 miles per hour, and weighs less than 2,500 pounds, is a motorcycle if the vehicle otherwise comes within the definition of subdivision (a).

(d) A farm tractor is not a motorcycle.

(e) This section shall become operative on January 1, 1997, or upon receipt by the Secretary of State from the Director of Transportation of the notice of determination by the National Highway Traffic Safety Administration that implementation of Section 400, as amended by Section 2 of the act that enacted this section during the 1993–94 Regular Session of the Legislature, would subject California to a transfer of funds pursuant to Section 153 of Title 23 of the United States Code, whichever occurs first.

CHAPTER 585

An act to add Sections 15819.28, 15819.29, and 15819.30 to, and to repeal Chapter 3.3 (commencing with Section 15819.40) of Part 10b of Division 3 of Title 2 of, the Government Code, and to amend Section 3000 of the Penal Code, relating to prisons, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. The Department of Corrections is hereby authorized to construct and establish a 2,544-bed combination medium and maximum security prison together with a 100-bed Level I support services facility on the grounds of the California State Prison-Corcoran to be known as the California State Prison-Kings County at Corcoran II.

SEC. 2. Division 13 (commencing with Section 21000) of the Public Resources Code that requires consideration of alternative sites for a proposed project and alternative uses for the site of a

proposed project shall not apply to the project authorized by Section 1.

SEC. 3. The Department of Corrections is authorized to construct and establish a 2,024-bed combination medium and maximum security prison together with a 208-bed Level I support services facility in the vicinity of Delano in Kern County to be known as the California State Prison-Kern County at Delano II.

SEC. 4. Notwithstanding any other law, the Department of Corrections is hereby authorized to construct only one of the prisons authorized by Sections 1 and 3 of this act. The department shall have the sole decision regarding which prison to construct. The department shall notify the Joint Legislative Committee on Prison Construction and Oversight and the fiscal committees of the Legislature on or before June 30, 1994, as to which prison project shall be constructed. At any time prior to the commencement of construction, the department may change the decision as to which project to construct if the originally selected project is delayed or barred due to litigation or any other means.

SEC. 5. (a) The Department of Corrections is hereby authorized to construct and establish a secure substance abuse treatment facility for minimum and medium security inmates at a location to be determined by the department.

(b) Only inmates who have a history of substance abuse shall be housed in the secure substance abuse treatment facility. The department shall give priority to housing inmates in the facility who the department determines meet all of the following criteria:

(1) The inmate desires to participate in substance abuse treatment.

(2) The inmate is incarcerated for crimes in which substance abuse was a contributing factor.

(3) The inmate has sufficient time remaining on his or her commitment to complete a full substance abuse treatment program while incarcerated.

(c) The secure substance abuse treatment facility shall be a minimum and medium security facility and shall house only inmates determined to be either Level I or Level II security levels as determined by the department's inmate classification system. The facility shall be designed specifically to provide intensive substance abuse treatment to all inmates housed in the facility.

(d) All inmates housed in the secure substance abuse treatment facility shall receive comprehensive substance abuse treatment. Treatment shall be multifaceted and highly structured with clearly defined rules and explicit expectation with regard to inmate behavior. Programs shall reinforce positive behavior and encourage inmates to develop social skills through limited self-government within treatment groups. Treatments shall include, but not be limited to, individual and group substance abuse counseling and workshops, victim awareness, academic and vocational education, physical fitness, drug testing, and planning for successful and sober

reentry upon parole. The existing institutional treatment components of the Right-Turn Program at the R.J. Donovan Correctional Facility and the Female Offender Substance Abuse Program at the California Institute for Women and their aftercare components shall serve as models for these treatment programs.

(e) The same range and intensity of treatment services shall be available to inmates whenever the facility is operated at a level that is greater than its designed bed capacity.

(f) The department shall monitor the progress of parolees released from the secure substance abuse treatment facility and report to the Legislature annually on or before January 1. These reports shall include data on the rate of recidivism and relapse to substance abuse of inmates released from these facilities.

SEC. 6. Section 15819.28 is added to the Government Code, to read:

15819.28. (a) The necessary funding for the construction of the California State Prison-Kings County at Corcoran II authorized by Section 1 of the act enacting this section may be obtained through lease-purchase financing arrangements. Sections 15819.1 to 15819.13, inclusive, and Section 15819.15 shall apply and for this purpose the following shall apply:

(1) "Prison facility" as used in Section 15819.1 includes the California State Prison-Kings County at Corcoran II.

(2) Notwithstanding the limitation imposed by Section 15819.3 regarding the amount of bonds to be issued for construction, acquisition, and financing of prison facilities, the State Public Works Board may issue additional bonds in order to pay the costs of acquiring and constructing or refinancing the California State Prison-Kings County at Corcoran II.

(b) Notwithstanding Section 13340, funds derived from the lease-purchase financing methods for the California State Prison in Kings County at Corcoran II deposited in the State Treasury, are hereby continuously appropriated to the State Public Works Board on behalf of the Department of Corrections for the purpose of acquiring and constructing or refinancing the prison facility so financed.

The sum of two hundred seventy-six million five hundred thousand dollars ($276,500,000) shall be available for capital outlay for the California State Prison-Kings County at Corcoran II from funds derived from lease-purchase financing methods.

Funds so appropriated shall be available as necessary for the purposes of site acquisition, site studies and suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, long lead and equipment items. A maximum of four million dollars ($4,000,000) of these funds may be available for mitigation costs of local government and school districts. Funds shall also be available for the construction of a 24-bed expansion to the acute care hospital on the grounds of the California State

Prison-Corcoran.

(c) The State Public Works Board may authorize the augmentation of the cost of construction of the project set forth in this section pursuant to the board's authority under Section 13332.11. In addition, the State Public Works Board may authorize any additional amounts necessary to establish a reasonable construction reserve and to pay the cost of financing, including the payment of interest during acquisition or construction of the project, the cost of financing a debt service reserve fund, and the cost of issuance of permanent financing for the project. This additional amount may include interest payable on any interim loan for the facility from the General Fund or the Pooled Money Investment Account pursuant to Section 16312.

SEC. 7. Section 15819.29 is added to the Government Code, to read:

15819.29. (a) The necessary funding for the construction of the California State Prison-Kern County at Delano II authorized by Section 3 of the act enacting this section may be obtained through lease-purchase financing arrangements. Sections 15819.1 to 15819.13, inclusive, and Section 15819.15 shall apply for this purpose provided that the following applies:

(1) "Prison facility" as used in Section 15819.1 includes the California State Prison-Kern County at Delano II.

(2) Notwithstanding the limitation imposed by Section 15819.3 regarding the amount of bonds to be issued for construction, acquisition, and financing of prison facilities, the State Public Works Board may issue additional bonds in order to pay the costs of acquiring and constructing or refinancing the California State Prison-Kern County at Delano II.

(b) Notwithstanding Section 13340, funds derived from the lease-purchase financing methods for the California State Prison-Kern County at Delano II deposited in the State Treasury, are hereby continuously appropriated to the State Public Works Board on behalf of the Department of Corrections for the purpose of acquiring and constructing or refinancing the prison facility so financed.

The sum of two hundred forty-three million five hundred thousand dollars ($243,500,000) shall be available for capital outlay for the California State Prison-Kern County at Delano II from funds derived from lease-purchase financing methods.

Funds so appropriated shall be available as necessary for the purposes of site acquisition, site studies and suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, long lead and equipment items. A maximum of four million dollars ($4,000,000) of the funds may be available for mitigation costs of local government and school districts.

(c) The State Public Works Board may authorize the augmentation of the cost of construction of the project set forth in

this section pursuant to the board's authority under Section 13332.11. In addition, the State Public Works Board may authorize any additional amounts necessary to establish a reasonable construction reserve and to pay the costs of financing, including the payment of interest during acquisition or construction of the project, the cost of financing a debt service reserve fund, and the cost of issuance of permanent financing for the project. This additional amount may include interest payable on any interim loan for the facility from the General Fund or the Pooled Money Investment Account pursuant to Section 16312.

SEC. 8. Section 15819.30 is added to the Government Code, to read:

15819.30. (a) The necessary funding for the construction of the Secure Substance Abuse Treatment Facility authorized by Section 5 of the act enacting this section may be obtained through lease-purchase financing arrangements. Sections 15819.1 to 15819.13, inclusive, and Section 15819.15 shall apply for this purpose provided that the following apply:

(1) "Prison facility" as used in Section 15819.1 includes the Secure Substance Abuse Treatment Facility.

(2) Notwithstanding the limitation imposed by Section 15819.3 regarding the amount of bonds to be issued for construction, acquisition, and financing of prison facilities, the State Public Works Board may issue additional bonds in order to pay the costs of acquiring and constructing or refinancing the Secure Substance Abuse Treatment Facility.

(b) Notwithstanding Section 13340, funds derived from the lease-purchase financing methods for the Secure Substance Abuse Treatment Facility deposited in the State Treasury, are hereby continuously appropriated to the State Public Works Board on behalf of the Department of Corrections for the purpose of acquiring and constructing or refinancing the prison facility so financed.

The sum of ninety-three million five hundred thousand dollars ($93,500,000) shall be available for capital outlay for the Secure Substance Abuse Treatment Facility from funds derived from lease-purchase financing methods.

Funds so appropriated shall be available as necessary for the purposes of site acquisition, site studies and suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, long lead and equipment items. A maximum of two million dollars ($2,000,000) of the funds may be available for mitigation costs of local government and school districts.

(c) The State Public Works Board may authorize the augmentation of the cost of construction of the project set forth in this section pursuant to the board's authority under Section 13332.11. In addition, the State Public Works Board may authorize any additional amounts necessary to establish a reasonable construction reserve and to pay the costs of financing, including the payment of

interest during acquisition or construction of the project, the cost of financing a debt service reserve fund, and the cost of issuance of permanent financing for the project. This additional amount may include interest payable on any interim loan for the facility from the General Fund or the Pooled Money Investment Account pursuant to Section 16312.

SEC. 9. Chapter 3.3 (commencing with Section 15819.40) of Part 10b of Division 3 of Title 2 of the Government Code is repealed.

SEC. 10. The sum of thirteen million dollars ($13,000,000) is hereby appropriated to the Department of Corrections, as follows:

(a) From the 1990 Prison Construction Fund, the sum of six million five hundred thousand dollars ($6,500,000) for the prisons authorized by Sections 1 and 3 of this act. This amount shall be available, as necessary, for the purposes of site acquisition, site studies and suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, long lead and equipment items.

(b) From the 1990 Prison Construction Fund, the sum of six million five hundred thousand dollars ($6,500,000) for the Secure Substance Abuse Treatment Facility. This amount shall be available, as necessary, for the purposes of site acquisition, site studies and suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, long lead and equipment items.

SEC. 11. The Department of Corrections shall submit a report to the Legislature on or before December 31, 1994, detailing the substance abuse, academic, and vocational education programs to be operated at the prisons authorized by Sections 1 and 3 of this act.

SEC. 12. Notwithstanding any other law, the Department of Corrections shall not open more than 500 beds as authorized in Section 1 or 3 of this act, until the beds authorized in Section 5 of this act are occupied and funded consistent with the program described in Section 5 of this act.

SEC. 13. The Department of Corrections, in conjunction with the California Department of Education and with input from affected local education agencies, shall develop and report to the Legislature on or before June 30, 1994, a recommended methodology for determining the level of mitigation the Department of Corrections shall provide to local education agencies impacted by prison sitings.

SEC. 14. Section 3000 of the Penal Code is amended to read:

3000. The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole,

unless waived, as provided in this section. Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter:

(a) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931, if applicable, the inmate shall be released on parole for a period not exceeding three years, unless the parole authority for good cause waives parole and discharges the inmate from custody of the department.

(b) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall be also applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(c) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(d) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under subdivision (a) or (b), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and subdivisions (a) and (b) shall be computed from the date of initial parole, or July 1, 1977, whichever is later, and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, in no case, except as provided in Section 3064, may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole, and, except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole.

(e) It is not the intent of this section to diminish resources presently allocated to the Department of Corrections for parole functions.

(f) The Department of Corrections shall meet with each inmate at least 30 days prior to his or her good time release date, unless the release date is within 30 days of July 1, 1977, and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority.

(g) For purposes of this chapter, the Department of Corrections shall be considered the parole authority with respect to persons sentenced to a term of imprisonment under Section 1170, except for persons found to meet the criteria specified in Section 2962. For these purposes, the parole authority shall be headed by a deputy director of the department who shall be appointed by the Governor and whose appointment shall be subject to Senate confirmation.

For purposes of this chapter, the Board of Prison Terms shall be considered the parole authority with respect to persons sentenced to a term of imprisonment under Section 1168 or for those persons meeting the criteria of Section 2962.

SEC. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The inmate population of the state prison system has increased by more than 4,500 inmates during the first five months of 1993, an average increase of 200 inmates per week. The current occupancy rate of the state prison is approximately 180 percent of design bed capacity, and this is projected to increase to nearly 200 percent of capacity in 1998.

In order to relieve the existing state prison system from its current and anticipated overcrowded conditions and to maintain the public safety and security at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 586

An act to add Section 11353.4 to the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 28, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 11353.4 is added to the Health and Safety Code, to read:

11353.4. (a) Any person 18 years of age or older who is convicted for a second or subsequent time of violating Section 11353, as that section applies to paragraph (1) of subdivision (f) of Section 11054, where the previous conviction resulted in a prison sentence, shall, as a full and separately served enhancement to the punishment imposed for that second or subsequent conviction of Section 11353, be punished by imprisonment in the state prison for one, two, or three years.

(b) If the second or subsequent violation of Section 11353, as described in subdivision (a), involved a minor who is 14 years of age

or younger, the defendant shall, as a full and separately served enhancement to any other enhancement provided in this section, be punished by imprisonment in the state prison for one, two, or three years, at the discretion of the court.

(c) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(d) The additional punishment provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(e) Notwithstanding any other provision of law, the court may strike the additional punishment provided for in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

CHAPTER 587

An act to amend Section 1203.066 of the Penal Code, relating to sex offenses.

[Approved by Governor September 28, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 1203.066 of the Penal Code is amended to read:

1203.066. (a) Notwithstanding Section 1203, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provisions of this section be stricken pursuant to Section 1385 for, any of the following persons:

(1) A person convicted of violating Section 288 or 288.5 when the act is committed by the use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(2) A person who caused bodily injury on the child victim in committing a violation of Section 288 or 288.5.

(3) A person convicted of a violation of Section 288 or 288.5 and who was a stranger to the child victim or befriended the child victim for the purpose of committing an act in violation of Section 288 or 288.5, unless the defendant honestly and reasonably believed the victim was 14 years of age or older.

(4) A person who used a weapon during the commission of a violation of Section 288 or 288.5.

(5) A person convicted of committing a violation of Section 288 or

288.5 and who has previously been convicted of a violation of Section 261, 264.1, 266, 267, 285, 288, 288.5, or 289, of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, or of assaulting another with intent to commit a crime specified in this paragraph in violation of Section 220.

(6) A person convicted of kidnapping the child victim in violation of either Section 207 or 209 and who kidnapped the victim for the purpose of committing a violation of Section 288 or 288.5.

(7) A person who is convicted of committing a violation of Section 288 or 288.5 against more than one victim.

(8) A person who in violating Section 288 or 288.5 has substantial sexual conduct with a victim under the age of 11 years.

(9) A person who occupies a position of special trust and commits an act of substantial sexual conduct. "Position of special trust" means that position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the victim. Position of authority includes, but is not limited to, the position occupied by a natural parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational director who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, or employer.

(10) A person who, in committing a violation of Section 288 or 288.5, used obscene matter, as defined in Section 311, or matter (as defined in Section 311) depicting sexual conduct, as defined in Section 311.3.

(b) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or by any foreign object, oral copulation, or masturbation of either the victim or the offender.

(c) Paragraphs (7), (8), (9), and (10) of subdivision (a) shall not apply when the court makes all of the following findings:

(1) The defendant is the victim's natural parent, adoptive parent, stepparent, relative, or is a member of the victim's household who has lived in the household.

(2) A grant of probation to the defendant is in the best interest of the child.

(3) Rehabilitation of the defendant is feasible in a recognized treatment program designed to deal with child molestation, and if the defendant is to remain in the household, a program that is specifically designed to deal with molestation within the family.

(4) There is no threat of physical harm to the child victim if probation is granted. The court upon making its findings pursuant to this subdivision is not precluded from sentencing the defendant to jail or prison, but retains the discretion not to. The court shall state its reasons on the record for whatever sentence it imposes on the defendant.

The court shall order the psychiatrist or psychologist appointed pursuant to Section 288.1 to include a consideration of the factors specified in paragraphs (2), (3), and (4) in making his or her report

to the court.

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

CHAPTER 588

An act to amend Section 1192.7 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 28, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act on a child under the age of 14 years; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any other felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony

in which the defendant personally uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing great bodily injury or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) burglary of an inhabited dwelling house, or trailer coach as defined by the Vehicle Code, or inhabited portion of any other building; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) grand theft involving a firearm; (27) any attempt to commit a crime listed in this subdivision other than an assault; and (28) any conspiracy to commit an offense described in paragraph (24) as it applies to Section 11370.4 of the Health and Safety Code where the defendant conspirator was substantially involved in the planning, direction, or financing of the underlying offense.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 2. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act on a child under the age of 14 years; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any other felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing great bodily injury or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) burglary of an inhabited dwelling house, or trailer coach as defined by the Vehicle Code, or inhabited portion of any other building; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22)

attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) grand theft involving a firearm; (27) carjacking; (28) any attempt to commit a crime listed in this subdivision other than an assault, and (29) any conspiracy to commit an offense described in paragraph (24) as it applies to Section 11370.4 of the Health and Safety Code where the defendant conspirator was substantially involved in the planning, direction, or financing of the underlying offense.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 3. Section 2 of this bill incorporates amendments to Section 1192.7 of the Penal Code proposed by both this bill and SB 60. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section

1192.7 of the Penal Code, and (3) this bill is enacted after SB 60, in which case Section 1192.7 of the Penal Code, as amended by SB 60, shall remain operative only until the operative date of this bill, at which time Section 2 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 589

An act to amend Sections 1680, 1696, 2353, 2612, 2664, 2770.10, 2878, 3750, 4869, 7028.1, 7045, 7159, 7163, 9793, 10236.2, and 19617.7 of, to amend and renumber Section 17510.8 of, and to repeal Section 10161.75 of, the Business and Professions Code, to amend Sections 43.93, 712, 1363.2, 1689.7, and 1942.4 of the Civil Code, to amend Sections 116.232, 473.1, 483.010, 483.015, and 1174.2 of the Code of Civil Procedure, to amend Section 4406 of the Commercial Code, to amend Sections 8804, 14504.2, 17878, 32241, 32242, 32243, 32244, 32245, 41320.1, 42238.15, 44010, 44253.6, 47602, 47605, 48204, 51220, 52772, 56345, 60004, 66301, 69274, 88116, 88127, 89701, and 94367 of, and to amend and renumber Sections 1597.95 and 67358 of, the Education Code, to amend Section 3567 of, and to repeal Section 23512.2, as added by Chapter 219 of the Statutes of 1992, of, the Elections Code, to amend Section 1107 of the Evidence Code, to amend Section 13080 of the Financial Code, to amend Section 3203 of the Fish and Game Code, to amend Sections 14611, 15071.5, 58110, and 74734.5 of, and to amend the heading of Article 4 (commencing with Section 58591) of Chapter 6 of Part 1 of Division 21 of, the Food and Agricultural Code, to amend Sections 3549.1, 13923, 15436, 20024.002, 25830.1, 51021, 53312.7, 53313.5, 53340.2, 53830.5, 65250, 65583.1, 66020, and 68560.5 of the Government Code, to amend and renumber Section 6832 of the Harbors and Navigation Code, to amend Sections 372, 1250, 1428, 1569.692, 1569.73, 11100, 11370.9, 11650, 11837, 11838.4, 15076, 17033, 17060, 18420, 18421, 19870, 25163, 25179.13, 25244.19, 25698, 25817.1, 32126, and 36005 of the Health and Safety Code, to amend Sections 1776 and 3852 of the Labor Code, to amend Sections 290, 290.3, 374.8, 422.75, 457.1, 549, 602, 653m, 853.6, 999t, 1000.6, 1001.65, 1048.1, 1203.1g, 1463.007, 1465.5, 4532, 6242, 12022.9, and 12288.5 of, the Penal Code, to amend Sections 8572 and 8574 of the Probate Code, to amend Section 10332 of the Public Contract Code, to amend Sections 30301, 30340, and 42774 of the Public Resources Code, to amend Sections 1802 and 99243 of the Public Utilities Code, to amend Sections 53, 75.11, 214.02, 6201.3, 8272, 8273, 9272, 9273, 9276, 17207, 19405, 23801, 24347.5, 25962, 30459.2, 30459.3, 32472, 32473, 40096, 40212, 40213, 41172, 41173, 43523, 43524, 45862, 45868, 45869, 45870, 45871, 46153, 50156.2, 50156.10, 50156.12, 50156.13, 50156.15, and 50156.16 of, and to repeal Sections 17208, 17208.1, 17208.2, 17208.3, 24347.6, 24347.7, 24347.8, and 24347.9 of, the Revenue and Taxation Code, to amend Section 30158 of, and to amend and renumber

Section 30161 of, the Streets and Highways Code, to amend Section 10205 of the Unemployment Insurance Code, to amend Sections 14601.5, 22454, and 22661 of the Vehicle Code, to amend Sections 1745.05 and 10631 of the Water Code, to amend Sections 366.21, 729.8, 731.6, 827, 4342, 5857, 11325.2, 14088.25, 14105.405, 16516, 16812, 17609.05, and 17731 of, to amend and renumber Sections 5856 and 18358.2 of, and to repeal Chapter 3 (commencing with Section 4342) of Part 3 of Division 4 of, the Welfare and Institutions Code, and to amend Section 1 of Chapter 1400 of the Statutes of 1984, Section 22 of Chapter 1608 of the Statutes of 1990, Section 6 of Chapter 1196 of the Statutes of 1991, and Section 1 of Chapter 563 of the Statutes of 1992, relating to the maintenance of the codes.

[Approved by Governor September 28, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 1680 of the Business and Professions Code is amended to read:

1680. Unprofessional conduct by a person licensed under this chapter is defined as, but is not limited to, the violation of any one of the following:

(a) The obtaining of any fee by fraud or misrepresentation.

(b) The employment directly or indirectly of any student or suspended or unlicensed dentist to practice dentistry as defined in this chapter.

(c) The aiding or abetting of any unlicensed person to practice dentistry.

(d) The aiding or abetting of a licensed person to practice dentistry unlawfully.

(e) The committing of any act or acts of gross immorality substantially related to the practice of dentistry.

(f) The use of any false, assumed, or fictitious name, either as an individual, firm, corporation, or otherwise, or any name other than the name under which he or she is licensed to practice, in advertising or in any other manner indicating that he or she is practicing or will practice dentistry, except that name as is specified in a valid permit issued pursuant to Section 1701.5.

(g) The practice of accepting or receiving any commission or the rebating in any form or manner of fees for professional services, radiograms, prescriptions, or other services or articles supplied to patients.

(h) The making use by the licentiate or any agent of the licentiate of any advertising statements of a character tending to deceive or mislead the public.

(i) The advertising of either professional superiority or the advertising of performance of professional services in a superior manner. This subdivision shall not prohibit advertising permitted by

subdivision (h) of Section 651.

(j) The employing or the making use of solicitors.

(k) The advertising in violation of Section 651.

(*l*) The advertising to guarantee any dental service, or to perform any dental operation painlessly. This subdivision shall not prohibit advertising permitted by Section 651.

(m) The violation of any of the provisions of law regulating the procurement, dispensing, or administration of dangerous drugs, as defined in Article 7 (commencing with Section 4211) of Chapter 9, or controlled substances, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code.

(n) The violation of any of the provisions of this division.

(o) The permitting of any person to operate dental radiographic equipment who has not met the requirements of Section 1656.

(p) The clearly excessive prescribing or administering of drugs or treatment, or the clearly excessive use of diagnostic procedures, or the clearly excessive use of diagnostic or treatment facilities, as determined by the customary practice and standards of the dental profession.

Any person who violates this subdivision is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) or more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days or more than 180 days, or by both a fine and imprisonment.

(q) The use of threats or harassment against any patient or licentiate for providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with the provisions of this chapter or to aid in the compliance.

(r) Suspension or revocation of a license issued by another state or territory on grounds which would be the basis of discipline in this state.

(s) The alteration of a patient's record with intent to deceive.

(t) Unsanitary or unsafe office conditions, as determined by the customary practice and standards of the dental profession.

(u) The abandonment of the patient by the licentiate, without written notice to the patient that treatment is to be discontinued and before the patient has ample opportunity to secure the services of another dentist and provided the health of the patient is not jeopardized.

(v) The willful misrepresentation of facts relating to a disciplinary action to the patients of a disciplined licentiate.

(w) Use of fraud in the procurement of any license issued pursuant to this chapter.

(x) Any action or conduct which would have warranted the denial of the license.

(y) The aiding or abetting of a licensed dentist or dental auxiliary to practice dentistry in a negligent or incompetent manner.

(z) The failure to report to the board in writing within seven days

either: (1) the death of his or her patient during the performance of any dental procedure; or, (2) the discovery of the death of a patient whose death is causally related to a dental procedure performed by him or her.

(aa) Participating in or operating any group advertising and referral services which is in violation of Section 650.2.

(bb) The failure to use a fail-safe machine with an appropriate exhaust system in the administration of nitrous oxide. The board shall, by regulation, define what constitutes a fail-safe machine.

(cc) Engaging in the practice of dentistry with an expired license.

(dd) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from dentist or dental auxiliary to patient, from patient to patient, and from patient to dentist or dental auxiliary. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300), Division 5, Labor Code) for preventing the transmission of HIV, Hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Registered Nursing, and the Board of Vocational Nurse and Psychiatric Technician Examiners, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(ee) The utilization by a licensed dentist of any person to perform the functions of a registered dental assistant, registered dental assistant in extended functions, registered dental hygienist, or registered dental hygienist in extended functions who, at the time of initial employment, does not possess a current, valid license to perform those functions.

SEC. 2. Section 1696 of the Business and Professions Code is amended to read:

1696. Notwithstanding the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to public meetings, a committee may convene in closed session to consider reports pertaining to any licentiate requesting or participating in a diversion program. A committee shall only convene in closed session to the extent that it is necessary to protect the privacy of such a licentiate.

SEC. 3. Section 2353 of the Business and Professions Code is

amended to read:

2353. Notwithstanding the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to public meetings, a committee may convene in executive session to consider reports pertaining to any physician and surgeon requesting or participating in a diversion program. A committee shall only convene in executive session to the extent that it is necessary to protect the privacy of such a physician and surgeon.

SEC. 4. Section 2612 of the Business and Professions Code is amended to read:

2612. Notice of each meeting of the committee shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 5. Section 2664 of the Business and Professions Code is amended to read:

2664. (a) Any diversion evaluation committee established by the committee shall have at least three members. In making appointments to a diversion evaluation committee, the committee shall consider the appointment of persons who are either recovering from substance abuse and have been free from substance abuse for at least three years immediately prior to their appointment or who are knowledgeable in the treatment and recovery of substance abuse. The committee also shall consider the appointment of a physician and surgeon who is board certified in psychiatry.

(b) Appointments to a diversion evaluation committee shall be by the affirmative vote of a majority of members appointed to the committee. Each appointment shall be at the pleasure of the committee for a term not to exceed four years. In its discretion, the committee may stagger the terms of the initial members so appointed.

(c) A majority of the members of a diversion evaluation committee shall constitute a quorum for the transaction of business. Any action requires an affirmative vote of a majority of those members present at a meeting constituting at least a quorum. Each diversion evaluation committee shall elect from its membership a chairperson and a vice chairperson. Notwithstanding the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), relating to public meetings, a diversion evaluation committee may convene in closed session to consider matters relating to any physical therapist or physical therapist assistant applying for or participating in a diversion program, and a meeting which will be convened entirely in closed session need not comply with Section 11125 of the Government Code. A diversion evaluation committee shall only convene in closed session to the extent it is necessary to protect the privacy of an applicant or participant. Each member of a diversion evaluation committee shall

receive a per diem and shall be reimbursed for expenses as provided in Section 103.

SEC. 6. Section 2770.10 of the Business and Professions Code is amended to read:

2770.10. Notwithstanding the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to public meetings, a committee may convene in closed session to consider reports pertaining to any registered nurse requesting or participating in a diversion program. A committee shall only convene in closed session to the extent that it is necessary to protect the privacy of such a licentiate.

SEC. 7. Section 2878 of the Business and Professions Code is amended to read:

2878. The board may suspend or revoke a license issued under this chapter for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual nursing functions.

(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event the record of conviction shall be conclusive evidence of the conviction.

(3) The use of advertising relating to nursing which violates Section 17500.

(4) The use of excessive force upon or the mistreatment or abuse of any patient. For the purposes of this paragraph, "excessive force" means force clearly in excess of that which would normally be applied in similar clinical circumstances.

(5) The failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law.

(b) Procuring a certificate by fraud, misrepresentation, or mistake.

(c) Procuring, aiding, abetting, attempting, or agreeing or offering to procure or assist at, a criminal abortion.

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter.

(e) Making or giving any false statement or information in connection with the application for issuance of a license.

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a license.

(h) Impersonating another practitioner, misrepresenting professional credentials or licensure status, or permitting another person to use his or her certificate or license.

(i) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of Article 12 (commencing with Section 2220) of Chapter 5.

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.

(k) The commission of any act punishable as a sexually related crime, if that act is substantially related to the duties and functions of the licensee.

(*l*) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300), Division 5, Labor Code) for preventing the transmission of HIV, Hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Dental Examiners, and the Board of Registered Nursing, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

SEC. 8. Section 3750 of the Business and Professions Code is amended to read:

3750. The examining committee may order the suspension for a period not exceeding 12 months, the revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

(a) Advertising in violation of Section 651 or Section 17500.

(b) Fraud in the procurement of any license under this chapter.

(c) Knowingly employing unlicensed persons who present themselves as licensed respiratory care practitioners.

(d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

(e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.

(f) Negligence in his or her practice as a respiratory care practitioner.

(g) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of the Medical Practice Act (Chapter 5 (commencing with Section 2000)).

(h) The aiding or abetting of any person to violate the provisions of this chapter or any regulations duly adopted under this chapter.

(i) The aiding or abetting of any person to engage in the unlawful practice of respiratory care.

(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

(k) Falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible entries in any patient, hospital, or other record.

(*l*) Changing the prescription of a physician and surgeon, or falsifying verbal or written orders for treatment or a diagnostic regime received, whether or not that action resulted in actual patient harm.

(m) Denial, suspension, or revocation of a license to practice respiratory care by another agency, state, or territory of the United States for any act or omission that would constitute grounds for the denial, suspension, or revocation of a license in this state.

(n) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the committee, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the committee shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, Hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the committee shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Dental Examiners, the Board of Registered Nursing, and the Board of Vocational Nurse and Psychiatric Technician Examiners, to encourage appropriate consistency in the implementation of this subdivision.

The committee shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

SEC. 9. Section 4869 of the Business and Professions Code is

amended to read:

4869. Notwithstanding the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to public meetings, a diversion evaluation committee may convene in closed session to consider reports pertaining to any veterinarian or animal health technician requesting or participating in a diversion program. A diversion evaluation committee shall only convene in closed session to the extent that it is necessary to protect the privacy of such a veterinarian or animal health technician.

SEC. 10. Section 7028.1 of the Business and Professions Code is amended to read:

7028.1. It is a misdemeanor for any contractor to perform or engage in asbestos-related work, as defined in Section 6501.8 of the Labor Code, without certification pursuant to Section 7058.5 of this code, or to perform or engage in a removal or remedial action, as defined in subdivision (d) of Section 7058.7, or, on or after January 1, 1992, to bid for the installation or removal of, or to install or remove, an underground storage tank, without certification pursuant to Section 7058.7. A contractor in violation of this section is subject to one of the following penalties:

(a) Conviction of a first offense is punishable by a fine of not less than one thousand dollars ($1,000) or more than three thousand dollars ($3,000), and by possible revocation or suspension of any contractor's license.

(b) Conviction of a subsequent offense requires a fine of not less than three thousand dollars ($3,000) or more than five thousand dollars ($5,000), or imprisonment in the county jail not exceeding one year, or both the fine and imprisonment, and a mandatory action to suspend or revoke any contractor's license.

SEC. 11. Section 7045 of the Business and Professions Code is amended to read:

7045. This chapter does not apply to the sale or installation of any finished products, materials, or articles of merchandise that do not become a fixed part of the structure, nor shall it apply to a material supplier or manufacturer furnishing finished products, materials, or articles of merchandise who does not install or contract for the installation of those items. The term "finished products" shall not include installed carpets or mobilehomes or mobilehome accessory structures, as defined in Section 7026.2.

This chapter shall apply to the installation of home improvement goods, as defined in Section 7151.

SEC. 12. Section 7159 of the Business and Professions Code is amended to read:

7159. This section shall apply only to home improvement contracts, as defined in Section 7151.2, between a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction and who contracts with an owner or tenant

for work upon a residential building or structure, or upon land adjacent thereto, for proposed repairing, remodeling, altering, converting, modernizing, or adding to the residential building or structure or land adjacent thereto, and where the aggregate contract price specified in one or more improvement contracts, including all labor, services, and materials to be furnished by the contractor, exceeds five hundred dollars ($500).

Every home improvement contract and every contract the primary purpose of which is the construction of a swimming pool, shall be subject to the provisions of this section. Every contract and any changes in the contract subject to the provisions of this section shall be evidenced by a writing and shall be signed by all the parties to the contract thereto. The writing shall contain the following:

(a) The name, address, and license number of the contractor, and the name and registration number of any salesperson who solicited or negotiated the contract.

(b) The approximate dates when the work will begin and on which all construction is to be completed.

(c) A plan and scale drawing showing the shape, size dimensions, and construction and equipment specifications for a swimming pool and for other home improvements, a description of the work to be done and description of the materials to be used and the equipment to be used or installed, and the agreed consideration for the work.

(d) If the payment schedule contained in the contract provides for a downpayment to be paid to the contractor by the owner or the tenant before the commencement of work, the downpayment shall not exceed two hundred dollars ($200) or 2 percent of the contract price for swimming pools, or one thousand dollars ($1,000) or 10 percent of the contract price for other home improvements, excluding finance charges, whichever is the lesser.

(e) A schedule of payments showing the amount of each payment as a sum in dollars and cents. In no event shall the payment schedule provide for the contractor to receive, or shall the contractor actually receive, payments in excess of 100 percent of the value of the work performed on the project at any time, excluding finance charges, except that the contractor may receive an initial downpayment authorized by subdivision (d). With respect to a swimming pool contract, the final payment may be made at the completion of the final plastering phase of construction, provided that any installation or construction of equipment, decking, or fencing required by the contract is also completed. A failure by the contractor without lawful excuse to substantially commence work within twenty (20) days of the approximate date specified in the contract when work will begin shall postpone the next succeeding payment to the contractor for that period of time equivalent to the time between when substantial commencement was to have occurred and when it did occur. The schedule of payments shall be stated in dollars and cents, and shall be specifically referenced to the amount of work or services to be performed and to any materials and equipment to be supplied. With

respect to a contract that provides for a schedule of monthly payments to be made by the owner or tenant and for a schedule of payments to be disbursed to the contractor by a person or entity to whom the contractor intends to assign the right to receive the owner's or tenant's monthly payments, the payments referred to in this subdivision mean the payments to be disbursed by the assignee and not those payments to be made by the owner or tenant.

(f) The contract shall state that upon satisfactory payment being made for any portion of the work performed, the contractor shall, prior to any further payment being made, furnish to the person contracting for the home improvement or swimming pool a full and unconditional release from any claim or mechanic's lien pursuant to Section 3114 of the Civil Code, for that portion of the work for which payment has been made.

(g) The requirements of subdivisions (d), (e), and (f) shall not apply when the contract provides for the contractor to furnish a performance and payment bond, lien and completion bond, bond equivalent, or joint control approved by the Registrar of Contractors covering full performance and completion of the contract and the bonds or joint control is or are furnished by the contractor, or when the parties agree for full payment to be made upon or for a schedule of payments to commence after satisfactory completion of the project. The contract shall contain in close proximity to the signatures of the owner and contractor a notice in at least 10-point type stating that the owner or tenant has the right to require the contractor to have a performance and payment bond.

(h) No extra or change-order work shall be required to be performed without prior written authorization of the person contracting for the construction of the home improvement or swimming pool. Any change-order forms for changes or extra work shall be incorporated in, and become a part of the contract.

(i) If the contract provides for a payment of a salesperson's commission out of the contract price, that payment shall be made on a pro rata basis in proportion to the schedule of payments made to the contractor by the disbursing party in accordance with subdivision (e).

(j) The language of the notice required pursuant to Section 7018.5.

(k) What constitutes substantial commencement of work pursuant to the contract.

(*l*) A notice that failure by the contractor without lawful excuse to substantially commence work within twenty (20) days from the approximate date specified in the contract when work will begin is a violation of the Contractors' State License Law.

(m) If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.

A failure by the contractor without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin is a violation of this section.

This section shall not be construed to prohibit the parties to a home improvement contract from agreeing to a contract or account subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

The writing may also contain other matters agreed to by the parties to the contract.

The writing shall be legible and shall be in a form that clearly describes any other document which is to be incorporated into the contract, and before any work is done, the owner shall be furnished a copy of the written agreement, signed by the contractor.

For purposes of this section, the board shall, by regulation, determine what constitutes "without lawful excuse."

The provisions of this section are not exclusive and do not relieve the contractor or any contract subject to it from compliance with all other applicable provisions of law.

A violation of this section by a licensee, or a person subject to be licensed, under this chapter, his or her agent, or salesperson is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) or by imprisonment in the county jail not exceeding one year, or by both fine and imprisonment.

SEC. 13. Section 7163 of the Business and Professions Code is amended to read:

7163. (a) No contract for home improvement shall be enforceable against the buyer if the obtaining of a loan for all or a portion of the contract price is a condition precedent to the contract or if the contractor provides financing, or in any manner assists the buyer to obtain a loan or refers the buyer to any person who may loan or arrange a loan for all or a portion of the contract price unless all of the following requirements are satisfied:

(1) The third party, if any, agrees to make the loan.

(2) The buyer agrees to accept the loan or financing.

(3) The buyer does not rescind the loan or financing transaction, within the period prescribed for rescission, pursuant to the federal Truth in Lending Act (15 U.S.C. Sec. 1601 et seq.) or Regulation Z, if applicable.

(b) Until the requirements of paragraphs (1), (2), and (3) of subdivision (a) are satisfied, it shall be unlawful for the contractor to do any of the following:

(1) Deliver any property or perform any services other than obtaining building permits or other similar services preliminary to the commencement of the home improvement for which no mechanic's lien can be claimed.

(2) Represent in any manner that the contract is enforceable or that the buyer has any obligation thereunder.

Any violation of this subdivision shall render the contract unenforceable.

(c) If the contract is unenforceable pursuant to subdivision (a) or subdivision (b), the contractor shall immediately and without

condition return all money, property, and other consideration given by the buyer. If the buyer gave any property as consideration and the contractor does not or cannot return it for whatever reason, the contractor shall immediately return the fair market value of the property or its value as designated in the contract, whichever is greater. Nothing herein shall prohibit a contractor from receiving a downpayment otherwise permitted by law provided the contractor returns the downpayment as herein required if the contract is unenforceable pursuant to subdivision (a) or (b).

(d) (1) Except as provided in paragraph (2), the buyer may retain without obligation in law or equity any services or property provided pursuant to a contract that is unenforceable pursuant to subdivision (a) or subdivision (b).

(2) If the contractor has delivered any property to the buyer pursuant to a contract which is unenforceable pursuant to subdivision (a) or subdivision (b), the buyer shall make the property available to the contractor for return provided that all of the following requirements are satisfied:

(A) The property can be practically returned to the contractor without causing any damage to the buyer.

(B) The contractor, at the contractor's expense, first returns to the buyer any money, property, and other consideration taken by the contractor provided that the property is returned in the condition that it was in immediately prior to its taking. If applicable, the contractor shall also, at its expense, reinstall any property taken in the manner in which the property had been installed prior to its taking.

(C) The contractor, at the contractor's expense, picks up the property within 60 days of the execution of the contract.

(e) For the purpose of this section, "home improvement" means "home improvement" as defined in Section 7151. Goods are included within the definition notwithstanding whether they are to be attached to real property or to be so affixed to real property as to become a part thereof whether or not severable therefrom.

(f) The rights and remedies provided the buyer under this section are nonexclusive and cumulative to all other rights and remedies under other laws.

(g) Any waiver of this section shall be deemed contrary to public policy and shall be void and unenforceable. However, the buyer may waive subdivisions (a) and (b) to the extent that the contract is executed in connection with the making of emergency repairs or services that are necessary for the immediate protection of persons or real or personal property. The buyer's waiver for emergency repairs or services shall be in a dated written statement that describes the emergency, states that the contractor has informed the buyer of subdivisions (a) and (b) and that the buyer waives those provisions, and is signed by each owner of the property. Waivers made on printed forms are void and unenforceable.

SEC. 14. Section 9793 of the Business and Professions Code is

amended to read:

9793. No repairperson shall commence work for compensation without specific authorization from the customer or his or her agent, in accordance with all of the following requirements:

(a) The repairperson shall give to the customer either of the following:

(1) A written estimated price for labor and parts for a specific job.

(2) A written estimate of the maximum cost for a specific job that does not differentiate between labor and parts, but which shall not be exceeded by the actual cost of the job, including labor and parts.

No work shall be done or parts supplied in excess of, or different from, the original written estimate without the separate oral or written consent of the customer. If the consent is oral, the repairperson shall make a notation on the work order and on the invoice of the date, time, name of person authorizing the additional work or change in work, and the telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost.

(b) If it is necessary to disassemble a general aviation aircraft or its component in order to prepare a written estimated price for required work, the repairperson shall first give the customer a written estimated price for the disassembly and reassembly. The estimate shall also include the cost of parts and necessary labor to replace items such as gaskets and seals that are normally destroyed by disassembling the component. If the disassembling might prevent the restoration of the component to its former condition, the repairperson shall write that information on the work order containing the estimate before the work order is signed by the customer.

The repairperson shall inform the customer orally, and conspicuously in writing on the work order, of the maximum time it will take the repairperson to reassemble the aircraft or its component if the customer elects not to proceed with the work. The repairperson shall not charge the customer for more time than the specified maximum time if the customer elects not to proceed with the work.

SEC. 15. Section 10161.75 of the Business and Professions Code is repealed.

SEC. 16. Section 10236.2 of the Business and Professions Code is amended to read:

10236.2. (a) A real estate broker who satisfies the criteria of subdivision (a) or (b) of Section 10232 and who fails to notify the Department of Real Estate, in writing, of that fact within 30 days thereafter as required by subdivision (f) of Section 10232 shall be assessed a penalty of fifty dollars ($50) per day for each additional day written notification has not been received up to and including the 30th day after the first day of the assessment penalty. On and after the 31st day the penalty is one hundred dollars ($100) per day, not to exceed a total penalty of ten thousand dollars ($10,000)

regardless of the number of days, until the department receives the written notification.

(b) The commissioner may suspend or revoke the license of any real estate broker who fails to pay a penalty imposed under this section. In addition, the commissioner may bring an action in an appropriate court of this state to collect payment of the penalty.

(c) All penalties paid or collected under this section shall be deposited into the Real Estate Fund.

SEC. 17. Section 17510.8 of the Business and Professions Code, as added by Chapter 1100 of the Statutes of 1992, is amended and renumbered to read:

17510.9. (a) A charity engaged in any solicitation or sales solicitation for charitable purposes, that collected more than 50 percent of its annual income and more than one million dollars ($1,000,000) in charitable contributions from donors in this state during the previous calendar year, and that spent more than 25 percent of its annual income on "nonprogram activities," which is defined as the sum of the expenditures specified in subparagraphs (A), (B), (C), and (D) of paragraph (2) of subdivision (b), shall annually prepare and provide to the Attorney General's Registry of Charitable Trusts three copies of a one-page document that provides the information required by subdivision (b). If the charity is subject to Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code, the document shall be submitted together with the charity's report required by Section 12586 of the Government Code, and shall provide information consistent with that provided to the registry pursuant to Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code.

(b) The contents of the document required pursuant to subdivision (a) shall be established by the Attorney General in a manner consistent with the procedures set forth in this subdivision and in subdivisions (a) and (b) of Section 12586 of the Government Code, and shall include, at a minimum, all of the following:

(1) Total revenue and contributions received of the charity.

(2) The dollar amount and the percentage of total revenue and charitable contributions allocated to funding each of the following administrative functions:

(A) Total salaries of all persons employed by the charity.

(B) Fundraising.

(C) Travel expenses.

(D) Overhead and other expenses related to managing and administering the charity.

(E) The salaries of the five highest compensated persons employed by the charity.

(3) The dollar amount and percentage of total revenue and charitable contributions allocated to programs.

(c) Each charity subject to this section shall make available for distribution the document required pursuant to subdivision (a)

following a request made in person, by telephone, or by mail. Each request shall be accompanied by a stamped, self-addressed envelope provided by the requester.

(d) The Attorney General shall make available for public review at the Registry of Charitable Trusts in Sacramento and in the San Francisco and Los Angeles offices of the Attorney General, the documents provided by charities pursuant to subdivision (a), and shall maintain these documents separately from other documents provided by charities pursuant to Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code.

SEC. 18. Section 19617.7 of the Business and Professions Code is amended to read:

19617.7. (a) The following definitions govern the construction of this section:

(1) "Breeder" means a person who is registered as the owner of a California-bred quarter horse mare with the official registering agency and is named on the applicable Certificate of Registration issued by the American Quarter Horse Association at the time the mare foals.

(2) "Eligible earnings" means the following:

(A) In the case of breeder premiums, the annual amount earned by a California-bred quarter horse for finishing first or second in qualifying races.

(B) In the case of owners' awards, the annual amount earned by a California-bred quarter horse for finishing first or second in qualifying races.

(C) In the case of stallion awards, the annual amount earned by California-conceived or California-bred foals of an eligible quarter horse sire for finishing first or second in qualifying races.

(D) In order for earnings from a qualifying race to be considered as eligible earnings, a California-bred quarter horse shall be registered as such with the official registering agency before the date entries were taken by the association for the qualifying race in which that horse earned purse money.

(E) For purposes of this paragraph, the maximum purse considered earned in any qualifying race within this state is two hundred thousand dollars ($200,000) for a win, and eighty thousand dollars ($80,000) for a second place finish.

(F) In determining the purse earned in any qualifying race that is a stakes race, the amount earned shall be based solely on the added money, with no consideration given to other sources of the purse, such as nomination, entry, or starting fees, bonuses, and sponsor contributions, or any combination thereof.

(G) On or before February 1 of any year, the stallion owner shall advise the official registering agency of any and all purses earned during the preceding year to be considered in determining the amount of the stallion award to which the owner is entitled.

(3) "Eligible quarter horse sire" means a quarter horse stallion

that was continuously present in this state from February 1 to July 15, inclusive, of the calendar year in which the qualifying race was conducted, and, if the sire left this state after July 15 of the calendar year in which the qualifying race was conducted, the sire returned to and was present in this state by February 1 of the following calendar year and thereafter remained until July 15 of that year. If a sire dies in this state and stood his last season at stud in this state, he shall thereafter continue to be considered an eligible quarter horse sire. Notwithstanding any other provision of law, a quarter horse stallion shall be considered an eligible quarter horse sire only if its owner has registered the stallion with the official registering agency for stallion awards on or before February 1 of the calendar year immediately following the calendar year for which the awards are being distributed.

(4) "Official registering agency" means the Pacific Coast Quarter Horse Racing Association.

(5) "Owner" means the person who is registered with the paymaster of purses on the date the qualifying race was conducted as the owner of the California-bred quarter horse earning purse money in that race.

(6) "Qualifying race" means all quarter horse races in this state.

(7) "Stallion owner" means the person who is the owner of the eligible quarter horse sire as of December 31 of the calendar year in which that sire's foals had eligible earnings or the person who owned the eligible quarter horse sire on the date that the sire died.

(b) Any association conducting a race meeting that includes quarter horse racing shall deposit with the official registering agency 0.2 of 1 percent of the total amount handled ontrack, and 0.4 of 1 percent of the total amount handled offtrack, in daily conventional and exotic parimutuel pools and a sum equal to 25 percent of those funds specified for purses in Section 19612.1, and the sums specified in Sections 19567 and 19617.5, resulting from quarter horse racing. The deposits shall be made at the following intervals:

(1) For any meeting of 20 racing days or less, the requisite deposit shall be made not later than seven days immediately following the last day of that meeting.

(2) For any meeting of more than 20 racing days, the initial deposit shall be made not later than 27 racing days after the commencement of that meeting and every 20 racing days thereafter, with a final deposit made not later than seven days following the last day of that meeting. The initial deposit for that meeting shall be based upon the applicable amount handled during the first 20 racing days of the meeting and deposits thereafter shall be based upon the applicable amount handled during the ensuing periods of 20 racing days with the last deposit being based upon the applicable amount handled from the end of the last 20-racing-day period for which a deposit has been made to the end of the meeting.

(c) After deducting a sum equal to 10 percent of the total deposits made pursuant to subdivision (b) and the total deposits made

pursuant to other provisions of this chapter, including Sections 19612.1 and 19612.2, to compensate the official registering agency for its administrative costs, the official registering agency shall distribute annually the balance of the deposits in the following manner:

(1) Sixty percent to the breeder fund from which breeder premiums are to be paid.

(2) Twenty-five percent to the owner fund from which owners' awards are to be paid.

(3) Fifteen percent to the stallion fund from which stallion awards are to be paid.

(d) The official registering agency shall make the following payments to the breeder, owner, and stallion owner to encourage agriculture and the breeding of high quality horses in this state:

(1) The breeder shall be paid a sum based on a prorated share of first and second place earnings from qualified races by a California-bred quarter horse.

(2) The owner shall be paid an owners' award, a sum based on a prorated share of first and second place earnings from qualified races by a California-bred quarter horse.

(3) The stallion owner shall be paid a stallion award, a sum based on a prorated share of first and second place earnings from qualified races by a California-bred quarter horse.

Stallion awards shall not be made to the owner of a sire that has been out of the state for breeding purposes during the calendar year.

(4) The breeder premium and owners' and stallion awards shall be paid not later than March 31 of the calendar year immediately following the calendar year for which the awards or premiums were earned.

(e) The amount remaining for distribution under this section, if any, after the payments are made under subdivision (d) shall be used for the payment of quarter horse breeder premiums and owners' and stallion awards on a prorated percentage based on the win and second place shares of the purse, exclusive of all purse money not derived from the parimutuel pools, to the breeders, owners, and owners of sires of quarter horses who have been officially placed first or second in one or more qualifying races.

(f) If there are insufficient funds to make all of the distributions in this section, there shall be no assessments made against any association to fund the deficiencies.

SEC. 19. Section 43.93 of the Civil Code is amended to read:

43.93. (a) For the purposes of this section the following definitions are applicable:

(1) "Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

(2) "Psychotherapist" means a physician and surgeon specializing in the practice of psychiatry, a psychologist, a psychological assistant, a marriage, family and child counselor, a registered marriage, family, and child counselor intern or trainee, an educational psychologist, an

apprentice social worker, or clinical social worker.

(3) "Sexual contact" means the touching of an intimate part of another person. "Intimate part" and "touching" have the same meanings as defined in subdivisions (f) and (d), respectively, of Section 243.4 of the Penal Code. For the purposes of this section, sexual contact includes sexual intercourse, sodomy, and oral copulation.

(4) "Therapeutic relationship" exists during the time the patient or client is rendered professional service by the therapist.

(5) "Therapeutic deception" means a representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the patient's or former patient's treatment.

(b) A cause of action against a psychotherapist for sexual contact exists for a patient or former patient for injury caused by sexual contact with the psychotherapist, if the sexual contact occurred under any of the following conditions:

(1) During the period the patient was receiving psychotherapy from the psychotherapist.

(2) Within two years following termination of therapy.

(3) By means of therapeutic deception.

(c) The patient or former patient may recover damages from a psychotherapist who is found liable for sexual contact. It is not a defense to the action that sexual contact with a patient occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for therapy or treatment sessions. No cause of action shall exist between spouses within a marriage.

(d) In an action for sexual contact, evidence of the plaintiff's sexual history is not subject to discovery and is not admissible as evidence except in either of the following situations:

(1) The plaintiff claims damage to sexual functioning.

(2) The defendant requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the history, and the court finds that the history is relevant and the probative value of the history outweighs its prejudicial effect.

The court shall allow the discovery or introduction as evidence only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is subject to discovery.

SEC. 20. Section 712 of the Civil Code is amended to read:

712. (a) Every provision contained in or otherwise affecting a grant of a fee interest in, or purchase money security instrument upon, real property in this state heretofore or hereafter made, which purports to prohibit or restrict the right of the property owner or his or her agent to display or have displayed on the real property, or on real property owned by others with their consent, or both, signs which are reasonably located, in plain view of the public, are of reasonable dimensions and design, and do not adversely affect public safety, including traffic safety, and which advertise the property for

sale, lease, or exchange, or advertise directions to the property, by the property owner or his or her agent is void as an unreasonable restraint upon the power of alienation.

(b) This section shall operate retrospectively, as well as prospectively, to the full extent that it may constitutionally operate retrospectively.

(c) A sign that conforms to the ordinance adopted in conformity with Section 713 shall be deemed to be of reasonable dimension and design pursuant to this section.

SEC. 21. Section 1363.2 of the Civil Code is amended to read:

1363.2. (a) A managing agent of a common interest development who accepts or receives funds belonging to the association shall deposit all such funds that are not placed into an escrow account with a bank, savings association, or credit union or into an account under the control of the association, into a trust fund account maintained by the managing agent in a bank, savings association, or credit union in this state. All funds deposited by the managing agent in the trust fund account shall be kept in this state in a financial institution, as defined in Section 31041 of the Financial Code, which is insured by the federal government, and shall be maintained there until disbursed in accordance with written instructions from the association entitled to the funds.

(b) At the written request of the board of directors of the association, the funds the managing agent accepts or receives on behalf of the association shall be deposited into an interest-bearing account in a bank, savings association, or credit union in this state, provided all of the following requirements are met:

(1) The account is in the name of the managing agent as trustee for the association or in the name of the association.

(2) All of the funds in the account are covered by insurance provided by an agency of the federal government.

(3) The funds in the account are kept separate, distinct, and apart from the funds belonging to the managing agent or to any other person or entity for whom the managing agent holds funds in trust except that the funds of various associations may be commingled as permitted pursuant to subdivision (d).

(4) The managing agent discloses to the board of directors of the association the nature of the account, how interest will be calculated and paid, whether service charges will be paid to the depository and by whom, and any notice requirements or penalties for withdrawal of funds from the account.

(5) No interest earned on funds in the account shall inure directly or indirectly to the benefit of the managing agent or his or her employees.

(c) The managing agent shall maintain a separate record of the receipt and disposition of all funds described in this section, including any interest earned on the funds.

(d) The managing agent shall not commingle the funds of the association with his or her own money or with the money of others

that he or she receives or accepts, unless all of the following requirements are met:

(1) The managing agent commingled the funds of various associations on or before February 26, 1990, and has obtained a written agreement with the board of directors of each association that he or she will maintain a fidelity and surety bond in an amount that provides adequate protection to the associations as agreed upon by the managing agent and the board of directors of each association.

(2) The managing agent discloses in the written agreement whether he or she is deriving benefits from the commingled account or the bank, credit union, or savings institution where the moneys will be on deposit.

(3) The written agreement provided pursuant to this subdivision includes, but is not limited to, the name and address of the bonding companies, the amount of the bonds, and the expiration dates of the bonds.

(4) If there are any changes in the bond coverage or the companies providing the coverage, the managing agent discloses that fact to the board of directors of each affected association as soon as practical, but in no event more than 10 days after the change.

(5) The bonds assure the protection of the association and provide the association at least 10 days' notice prior to cancellation.

(6) Completed payments on the behalf of the association are deposited within 24 hours or the next business day and do not remain commingled for more than 10 calendar days.

(e) The prevailing party in an action to enforce this section shall be entitled to recover reasonable legal fees and court costs.

(f) As used in this section, a "managing agent" is a person or entity, who for compensation or, in expectation of compensation, exercises control over the assets of the association. However, a "managing agent" does not include a full-time employee of the association or a regulated financial institution operating within the normal course of business, or an attorney at law acting within the scope of his or her license.

(g) As used in this section, "completed payment" means funds received which clearly identify the account to which the funds are to be credited.

SEC. 22. Section 1689.7 of the Civil Code is amended to read:

1689.7. (a) (1) In a home solicitation contract or offer the buyer's agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, signed by the buyer, and except as provided in paragraph (2), shall contain in immediate proximity to the space reserved for his or her signature a conspicuous statement in a size equal to at least 10-point bold type, as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(2) The statement required pursuant to this subdivision for a

home solicitation contract or offer for the purchase of a personal emergency response unit, as defined in Section 1689.6, which is not installed with and as part of a home security alarm system subject to the Alarm Company Act (Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code) which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, is as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the following: (1) the name and address of the seller to which the notice is to be mailed, and (2) the date the buyer signed the agreement or offer to purchase.

(c) Except as provided in subdivision (d), the agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point the following statement written in the same language, e.g., Spanish, as used in the contract:

"Notice of Cancellation"

/enter date of transaction/

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____,
/name of seller/

at _____
/address of seller's place of business/

not later than midnight of _____.
(Date)

I hereby cancel this transaction. _____
(Date)

_____
(Buyer's signature)

(d) Any agreement or offer to purchase a personal emergency response unit, as defined in Section 1689.6, which is not installed with and as part of a home security alarm system subject to the Alarm Company Act which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, shall be subject to the requirements of subdivision (c), and shall be accompanied by the "Notice of Cancellation" required by subdivision (c), except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(e) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel and the requirement that cancellation be in writing, at the time the home solicitation contract or offer is executed.

(f) Until the seller has complied with this section the buyer may cancel the home solicitation contract or offer.

(g) "Contract or sale" as used in subdivision (c) means "home solicitation contract or offer" as defined by Section 1689.5.

SEC. 23. Section 1942.4 of the Civil Code is amended to read:

1942.4. (a) Any landlord who demands or collects rent when all of the following conditions exist is liable to the tenant or lessee for the actual damages sustained by the tenant or lessee and special damages in an amount not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000):

(1) The rental dwelling substantially lacks any of the affirmative standard characteristics listed in Section 1941.1.

(2) A public officer or employee who is responsible for the enforcement of any housing law has notified the landlord, or an agent of the landlord, in a written notice issued after inspection of the premises that informs the landlord of his or her obligations to abate the nuisance or repair the substandard conditions.

(3) The conditions have existed and have not been abated 60 days beyond the date of issuance of the notice specified in paragraph (2) and the delay is without good cause.

(4) The conditions were not caused by an act or omission of the tenant or lessee in violation of Section 1929 or 1941.2.

(b) In addition to recovery of allowable costs of suit, the prevailing party shall be entitled to recovery of reasonable attorney's fees in an amount fixed by the court.

(c) Any court that awards damages under subdivision (a) may also order the landlord to abate any nuisance at the rental dwelling and to repair any substandard conditions of the rental dwelling, as defined in Section 1941.1, which significantly or materially affect the health or safety of the occupants of the rental dwelling and are uncorrected. If the court orders repairs or corrections, or both, the court's jurisdiction continues over the matter for the purpose of ensuring compliance.

(d) The tenant or lessee shall be under no obligation to undertake any other remedy prior to exercising his or her rights under this section.

(e) Any action under this section may be maintained in small claims court if the claim does not exceed the jurisdictional limit of that court.

(f) The remedy provided by this section applies only to rental agreements or leases entered into or renewed on or after January 1, 1986, and may be utilized in addition to any other remedy provided by this chapter, the rental agreement, lease, or other applicable statutory or common law. Nothing in this section shall require any landlord to comply with this section if he or she pursues his or her rights pursuant to Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code.

SEC. 24. Section 116.232 of the Code of Civil Procedure is amended to read:

116.232. (a) The boards of supervisors of the City and County of San Francisco and the County of Stanislaus may elect to participate in pilot projects within their respective jurisdictions under which the limitation on filings provided in Section 116.231 does not apply to the participating city and county or county respectively, or to any city, school district, county office of education, community college district, or local district within those jurisdictions. It is the intent of the Legislature that this additional authority shall constitute a pilot project to determine the efficacy of use by public entities of the small claims courts for actions on claims exceeding two thousand five hundred dollars ($2,500).

(b) If any small claims action is filed by the City and County of San Francisco or the County of Stanislaus, pursuant to subdivision (a), and the defendant informs the court either in advance of the hearing by written notice or at the time of the hearing, that he or she is represented in the action by legal counsel, the action shall be transferred to the municipal court.

(c) This section shall be repealed on January 1, 1995, unless a later enacted statute, which is enacted before that date, deletes or extends that date.

SEC. 25. Section 473.1 of the Code of Civil Procedure is amended to read:

473.1. The court may, upon such terms as may be just, relieve a party from a judgment, order, or other proceeding taken against him or her, including dismissal of an action pursuant to Section 581 or Chapter 1.5 (commencing with Section 583.110) of Title 8, where a court of this state has assumed jurisdiction, pursuant to Section 6180 or 6190 of the Business and Professions Code, over the law practice of the attorney for the party and the judgment, order or other proceeding was taken against the party after the application for the court to assume jurisdiction over the practice was filed. Application for this relief shall be made within a reasonable period of time, in no case exceeding six months, after the court takes jurisdiction over the practice. However, in the case of a judgment, order, or other proceeding determining the ownership or right to possession of real or personal property, without extending the six-month period, when a notice in writing is personally served within the state both upon the party against whom the judgment, order, or other proceeding has been taken, and upon the attorney appointed pursuant to Section 6180.5 of the Business and Professions Code to act under the court's direction, notifying the party and the appointed attorney that the order, judgment, or other proceeding was taken against him or her and that any rights the party has to apply for relief under the provisions of the section shall expire 90 days after service of notice, then application for relief must be made within 90 days after service of the notice upon the defaulting party or the attorney appointed to act under the court's direction pursuant to Section 6180.5 of the Business and Professions Code, whichever service is later. No affidavit or declaration of merits shall be required of the moving party.

SEC. 26. Section 483.010 of the Code of Civil Procedure is amended to read:

483.010. (a) Except as otherwise provided by statute, an attachment may be issued only in an action on a claim or claims for money, each of which is based upon a contract, express or implied, where the total amount of the claim or claims is a fixed or readily ascertainable amount not less than five hundred dollars ($500) exclusive of costs, interest, and attorney's fees.

(b) An attachment may not be issued on a claim which is secured by any interest in real property arising from agreement, statute, or other rule of law (including any mortgage or deed of trust of realty and any statutory, common law, or equitable lien on real property, but excluding any security interest in fixtures subject to Division 9 (commencing with Section 9101) of the Commercial Code). However, an attachment may be issued (1) where the claim was originally so secured but, without any act of the plaintiff or the

person to whom the security was given, the security has become valueless or has decreased in value to less than the amount then owing on the claim, in which event the amount to be secured by the attachment shall not exceed the lesser of the amount of the decrease or the difference between the value of the security and the amount then owing on the claim, or (2) where the claim was secured by a nonconsensual possessory lien but the lien has been relinquished by the surrender of the possession of the property.

(c) If the action is against a defendant who is a natural person, an attachment may be issued only on a claim which arises out of the conduct by the defendant of a trade, business, or profession. An attachment may not be issued on a claim against a defendant who is a natural person if the claim is based on the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where the property sold or leased, or licensed for use, the services furnished, or the money loaned was used by the defendant primarily for personal, family, or household purposes.

(d) An attachment may be issued pursuant to this section whether or not other forms of relief are demanded.

(e) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 27. Section 483.015 of the Code of Civil Procedure is amended to read:

483.015. (a) Subject to subdivision (b) and to Section 483.020, the amount to be secured by an attachment is the sum of the following:

(1) The amount of the defendant's indebtedness claimed by the plaintiff.

(2) Any additional amount included by the court under Section 482.110.

(b) The amount described in subdivision (a) shall be reduced by the sum of the following:

(1) The amount of any money judgment in favor of the defendant and against the plaintiff that remains unsatisfied and is enforceable.

(2) The amount of any indebtedness of the plaintiff that the defendant has claimed in a cross-complaint filed in the action if the defendant's claim is one upon which an attachment could be issued.

(3) The amount of any claim of the defendant asserted as a defense in the answer pursuant to Section 431.70 if the defendant's claim is one upon which an attachment could be issued had an action been brought on the claim when it was not barred by the statute of limitations.

(4) The value of any security interest in the property of the defendant held by the plaintiff to secure the defendant's indebtedness claimed by the plaintiff, together with the amount by which the value of the security interest has decreased due to the act of the plaintiff or any person to whom the security interest was transferred.

(c) This section shall remain in effect only until January 1, 1996,

and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 28. Section 1174.2 of the Code of Civil Procedure is amended to read:

1174.2. (a) In an unlawful detainer proceeding involving residential premises after default in payment of rent and in which the tenant has raised as an affirmative defense a breach of the landlord's obligations under Section 1941 of the Civil Code or of any warranty of habitability, the court shall determine whether a substantial breach of these obligations has occurred. If the court finds that a substantial breach has occurred, the court (1) shall determine the reasonable rental value of the premises in its untenantable state to the date of trial, (2) shall deny possession to the landlord and adjudge the tenant to be the prevailing party, conditioned upon the payment by the tenant of the rent that has accrued to the date of the trial as adjusted pursuant to this subdivision within a reasonable period of time not exceeding five days, from the date of the court's judgment or, if service of the court's judgment is made by mail, the payment shall be made within the time set forth in Section 1013, (3) may order the landlord to make repairs and correct the conditions which constitute a breach of the landlord's obligations, (4) shall order that the monthly rent be limited to the reasonable rental value of the premises as determined pursuant to this subdivision until repairs are completed, and (5) except as otherwise provided in subdivision (b), shall award the tenant costs and attorneys' fees if provided by, and pursuant to, any statute or the contract of the parties. If the court orders repairs or corrections, or both, pursuant to paragraph (3), the court's jurisdiction continues over the matter for the purpose of ensuring compliance. The court shall, however, award possession of the premises to the landlord if the tenant fails to pay all rent accrued to the date of trial, as determined due in the judgment, within the period prescribed by the court pursuant to this subdivision. The tenant shall, however, retain any rights conferred by Section 1174.

(b) If the court determines that there has been no substantial breach of Section 1941 of the Civil Code or of any warranty of habitability by the landlord or if the tenant fails to pay all rent accrued to the date of trial, as required by the court pursuant to subdivision (a), then judgment shall be entered in favor of the landlord, and the landlord shall be the prevailing party for the purposes of awarding costs or attorneys' fees pursuant to any statute or the contract of the parties.

(c) As used in this section, "substantial breach" means the failure of the landlord to comply with applicable building and housing code standards which materially affect health and safety.

(d) Nothing in this section is intended to deny the tenant the right to a trial by jury. Nothing in this section shall limit or supersede any provision of Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code.

SEC. 29. Section 4406 of the Commercial Code, as amended by Section 45 of Chapter 914 of the Statutes of 1992, is amended to read:

4406. (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment. If the bank does not return the items, it shall provide in the statement of account the telephone number that the customer may call to request an item or a legible copy thereof pursuant to subdivision (b).

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank shall provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. A bank shall provide, upon request and without charge to the customer, at least two items or a legible copy thereof with respect to each statement of account sent to the customer.

(c) If a bank sends or makes available a statement of account or items pursuant to subdivision (a), the customer shall exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer shall promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subdivision (c), the customer is precluded from asserting any of the following against the bank:

(1) The customer's unauthorized signature or any alteration on the item if the bank also proves that it suffered a loss by reason of the failure.

(2) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

(e) If subdivision (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the

extent to which the failure of the customer to comply with subdivision (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subdivision (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer (subdivision (a)) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subdivision, the payor bank may not recover for breach of warranty under Section 4208 with respect to the unauthorized signature or alteration to which the preclusion applies.

(g) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 30. Section 4406 of the Commercial Code as added by Section 45.5 of Chapter 914 of the Statutes of 1992, is amended to read:

4406. (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer to identify the items paid. If the bank does not return the items, it shall provide in the statement of account the telephone number that the customer may call to request an item or a legible copy thereof pursuant to subdivision (b).

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank shall provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. A bank shall provide, upon request and without charge to the customer, at least two items or a legible copy thereof with respect to each statement of account sent to the customer.

(c) If a bank sends or makes available a statement of account or items pursuant to subdivision (a), the customer shall exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer shall promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by

subdivision (c), the customer is precluded from asserting any of the following against the bank:

(1) The customer's unauthorized signature or any alteration on the item if the bank also proves that it suffered a loss by reason of the failure.

(2) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

(e) If subdivision (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subdivision (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subdivision (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer (subdivision (a)) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subdivision, the payor bank may not recover for breach of warranty under Section 4208 with respect to the unauthorized signature or alteration to which the preclusion applies.

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

SEC. 31. Section 1597.95 of the Education Code is amended and renumbered to read:

8175. The California Child Care Resource and Referral Network, in consultation with representatives of private industry, parents, child care resource and referral agencies, the Department of Justice, the State Department of Social Services, the State Department of Education, trustline providers, employment agencies, and the pediatric health sector, shall review and make recommendations concerning the operation of the trustline.

SEC. 32. Section 8804 of the Education Code is amended to read:

8804. The superintendent shall award grants to a local educational agency or consortium to pay the costs of planning and operating, on behalf of one or more qualifying schools within the local educational agency or consortium, programs that provide support services to pupils and their families at the schoolsite, or at a site adjacent to the school, as follows:

(a) Grants shall be awarded by the superintendent based upon the recommendations of the council and pursuant to this section.

(b) Two types of grants may be awarded to applicant local educational agencies or consortia, depending upon the level of readiness of that applicant to implement a program pursuant to this chapter. The superintendent shall issue requests for proposals for awarding the grants, which shall specify maximum dollar amounts for which each type of grant may be awarded. The requests for proposals also shall specify other criteria, as required by this article. The superintendent shall award those grants as follows:

(1) Planning grants may be awarded to local educational agencies or consortia that have demonstrated a need to implement a program, but that are not ready to begin the operation of the program, or that are in need of additional planning to expand existing support services programs. Planning grants shall be no more than fifty thousand dollars ($50,000) and shall be awarded for a period not to exceed two years. Upon completion of the planning phase, the local educational agency or consortium shall be eligible to apply for and may receive an operational grant.

(2) Operational grants may be awarded to local educational agencies or consortia that have demonstrated readiness to begin operation of a program or to expand existing support services programs. Operational grants shall supplement, not supplant, existing services and funds.

(3) Operational grants shall be awarded for a period not to exceed three years.

(A) Operational grants may include one-time startup grants, which may be used for, among other things, purchasing equipment, hiring staff, designing a program evaluation, or hiring a consultant. Startup grants shall be awarded for no more than one hundred thousand dollars ($100,000).

(B) Operational grants shall be awarded for no more than three hundred thousand dollars ($300,000). No more than 50 percent of each grant shall be available for expenditure on direct services, as long as the grant application contains a three-year plan to significantly reduce or to eliminate agency reliance on funding provided under this article for direct services. Direct services do not include salaries for staff who are developing or implementing the program.

(c) All grants awarded under this article shall be matched by the participating local educational agency or consortium with one dollar ($1) for each four dollars ($4) awarded. The match shall be contributed in cash or as services or resources of comparable value. It is the intent of the Legislature that participants seek and utilize private funds or resources for this purpose. The superintendent may waive the match requirement upon verifying that the local educational agency or consortium made a substantial effort to secure a match but was unable to secure the required match.

(d) The superintendent shall award grants pursuant to this article to local educational agencies or consortia in northern, central, and southern California, in urban, suburban, and rural areas. To the

extent possible, the grants shall be awarded for programs representative of the ethnic and linguistic diversity of schoolage pupils and their families. Further, to the extent possible, 50 percent of the grants shall be awarded to schools serving elementary school pupils and 50 percent to schools serving junior and senior high school pupils.

(e) Until January 1, 1995, no more than 300 local educational agencies or consortia shall be selected to participate in the Healthy Start Support Services for Children Grant Program.

(f) A local educational agency or consortium is eligible for a grant under this article, on behalf of one or more schools operated by the agency or consortium, if it demonstrates in its program plan that it:

(1) Will give priority for services provided under this chapter to pupils from low-income families.

(2) Will assist families in responding to support services needs of pupils.

(3) Has established the local agency collaboration process described in Article 4 (commencing with Section 8806), including a mechanism for sharing governance with cooperating agencies and entities, and for integrating or redirecting existing resources and other school support services.

(4) If certification as a Medi-Cal provider is available to schools pursuant to the federal Omnibus Reconciliation Act of 1989 (P.L. 101-239), that it has submitted or is submitting an application to the State Department of Health Services for that certification.

(5) Involves parents or guardians and teachers in the process of identifying pupils' service needs and in the planning for and provision of support services.

(g) For purposes of this chapter, support services shall include case-managed health, mental health, social, and academic support services benefiting children and their families, and may include, but are not limited to:

(1) Health care, including:

(A) Immunizations.

(B) Vision and hearing testing and services.

(C) Dental services.

(D) Physical examinations, diagnostic, and referral services.

(E) Prenatal care.

(2) Mental health services, including primary prevention, crisis intervention, assessments, and referrals, and training for teachers in the detection of mental health problems.

(3) Substance abuse prevention and treatment services.

(4) Family support and parenting education, including child abuse prevention and schoolage parenting programs.

(5) Academic support services, including tutoring, mentoring, employment, and community service internships, and inservice training for teachers and administrators. However, grants for these purposes shall supplement, not supplant, existing resources in these areas.

(6) Counseling, including family counseling and suicide prevention.

(7) Services and counseling for children who experience violence in their communities.

(8) Nutrition services.

(9) Youth development services, including tutoring, mentoring, recreation, career development, and job placement.

(10) Case management services.

(11) Provision of onsite Medi-Cal eligibility workers.

(h) A local educational agency or consortium may contract with other entities, including county agencies and private nonprofit organizations or private partners, to provide services to pupils and their families.

(i) Each local educational agency or consortium seeking a grant under this article shall submit an application to the superintendent at a time and manner, and with any appropriate information, as the superintendent may reasonably require.

Each grant application submitted shall include all of the following:

(1) A description of the proposed programs, including four or more support services expected to be provided at the schoolsite or at a site near, or adjacent to, the school.

(2) Documentation of need for participation in the Healthy Start Support Services for Children Grant Program.

(3) Documentation of need for planning assistance, program operation support, or both.

(4) As to any operational grant application, a description of the objectives of the program, the amount and sources of required funding, the existing resources to be used or redirected, the priorities for development and timing of the program, the agencies responsible for the implementation of the program, and the procedures for the evaluation of the program.

The program plan submitted with an operational grant application shall include all of the following:

(A) Provisions for data collection and recordkeeping, including records of the population served, the components of the service, the results of the service, and costs, including startup, direct, and indirect costs, including those to other agencies, and cost savings.

(B) A service evaluation component, including input, process, and outcome indicators, quality assessment, and the process by which these measures will be taken. To the extent possible, the plan should include specific targets and outcome measures.

(C) A specific governing mechanism by which the plan will be implemented, including local decisionmaking responsibilities, organizational needs, anticipated problems and procedures to solve them, and incentives for collaboration and participation incentives to personnel.

(D) A specific system for the provision of case management services, including procedures for implementation, identification of the target population, anticipated outcomes, and a list of existing

services, resources, and programs that will be used as components of the program.

(5) In the case of a consortium, a list of its members.

(6) The grant application also shall document any procedures that have been, or will be, taken to designate the local educational agency as a Medi-Cal provider pursuant to the federal Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239) if this certification is available.

(7) A description of technical assistance, professional growth, and development needs, if any.

(8) A description of the proposed plan for family involvement in the program.

(9) A description of the population anticipated to be served.

(10) In the case of a grant application for program planning, a plan describing how the proposed program will be implemented after the grant has expired.

(j) Grants awarded pursuant to this article may be used for salaries of staff responsible for developing or implementing the program plan and administrative support staff, equipment and supplies, training, and insurance, pursuant to subdivision (b).

(k) No more than 5 percent of any amount appropriated in any fiscal year to carry out the purposes of this chapter may be used by the superintendent for program administration, evaluation, and technical assistance. Technical assistance includes, but is not limited to, assistance in preparing both planning and operational grants, establishing interagency collaboration, providing information dissemination and referrals, including information about appropriate program models, conducting site visits, and convening workshops to assist in the implementation of a program developed pursuant to this chapter.

(1) Of this amount, up to 75 percent may be used for the purpose of outreach and local assistance to local educational agencies. The remainder shall be used for state-level program administration.

(2) The superintendent shall ensure that adequate resources are available to conduct an evaluation pursuant to subdivision (b) of Section 8805.

(*l*) Commencing in the 1992 calendar year, and each subsequent year for which funding is available, grants shall be awarded according to the following schedule:

(1) The superintendent shall issue requests for proposals on or before February 1.

(2) Grant proposals shall be submitted to the superintendent on or before April 1.

(3) The superintendent shall award grants on or before June 30.

SEC. 33. Section 14504.2 of the Education Code is amended to read:

14504.2. (a) The Controller may perform quality control reviews of audit working papers to determine whether audits are performed in conformity with the audit provisions of the audit guide developed

pursuant to Section 14502. The Controller shall communicate the results of his or her reviews to the independent auditor, and to the school district or office of the county superintendent of schools for which the audit was performed, and shall review his or her findings with the independent auditor.

(b) Prior to the performance of any quality control reviews, the Controller shall develop and publish guidelines and standards for those reviews. Pursuant to the development of those guidelines and standards, the Controller shall provide opportunity for public comment.

(c) If a school district has received an emergency apportionment pursuant to Article 2 (commencing with Section 41320) or Article 2.5 (commencing with Section 41325) of Chapter 3 of Part 24, the Controller shall conduct a quality control review of the audit working papers of the independent auditor who performed the audits for that school district for the prior three fiscal years. If the quality control review of the Controller indicates that the audit was conducted in a manner that may constitute unprofessional conduct as defined pursuant to Section 5100 of the Business and Professions Code, including, but not limited to, gross negligence resulting in a material misstatement in the audit, the Controller shall refer the case to the State Board of Accountancy. In the event that the State Board of Accountancy finds that the independent auditor conducted an audit in a manner that is unprofessional, the independent auditor shall be prohibited from performing any school district audit for a period of three years, in addition to any other penalties that the State Board of Accountancy may impose.

(d) In any matter that is referred to the State Board of Accountancy under subdivision (c), the Controller may suspend the independent auditor from performing any school district audits pending final disposition of the matter by the State Board of Accountancy provided that the Controller gives the independent auditor notice and an opportunity to respond to that suspension. The independent auditor shall be given credit for any period of suspension in the event the State Board of Accountancy prohibits the independent auditor from performing audits of the school district under subdivision (c). In no event may the Controller suspend an independent auditor under this subdivision for a period of longer than three years.

(e) The county superintendent of schools or the county board of education may refer an independent auditor of a school district to the State Board of Accountancy for action pursuant to subdivision (c) if an audit of a school district was conducted in a manner that may constitute unprofessional conduct as defined by Section 5100 of the Business and Professions Code, including, but not limited to, gross negligence resulting in a material misstatement in the audit.

SEC. 34. Section 17878 of the Education Code is amended to read:

17878. Two members of the authority shall constitute a quorum. The affirmative vote of a majority of a quorum shall be necessary for

any action taken by the authority. A vacancy in the membership of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Each meeting of the authority shall be open to the public and shall be held in accordance with Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code. Resolutions of the authority need not be published or posted. The authority may delegate by resolution to one or more of its members or its executive director any powers and duties as it may deem proper.

SEC. 35. Section 32241 of the Education Code is amended to read:

32241. (a) The State Department of Health Services shall conduct a sample survey of schools in this state for the purpose of developing risk factors to predict lead contamination in public schools. The survey shall include schools that are representative of the state by geographical region and size of enrollment. The schools to be surveyed shall be selected on the basis of their ability to provide data necessary to make scientifically valid estimates of the nature and extent of lead hazards. Risk factors shall include, but are not limited to, location in relation to high-risk areas, age of the facility, likely use of lead paint in or around the facility, numbers of children enrolled under the age of six, and results of lead screening programs established pursuant to Article 4.6 (commencing with Section 372) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code.

(b) For purposes of this article, "schools" mean public elementary schools, public preschools, and public day care facilities.

(c) For purposes of this article, "public preschools" and "public day care facilities" mean preschools and day care facilities, respectively, located on public school property.

SEC. 36. Section 32242 of the Education Code is amended to read:

32242. The department shall do all of the following:

(a) Design and implement a strategy for identifying the characteristics of high-risk schools and provide a basis for statewide estimates of the presence of lead in schools attended by young children.

(b) Conduct a sample survey, as described in Section 32241, to determine the likely extent and distribution of lead exposure to children from paint on the school, soil in play areas at the school, drinking water at the tap, and other potential sources identified by the department for this purpose. To the maximum extent possible, limited sample testing shall be used to validate survey results. The department shall compile and summarize the results of that survey and report those results to the Legislature and the State Department of Education.

(c) Within 60 days of the completion of testing a schoolsite, the department shall notify the principal of the school or director of the schoolsite of the survey results. Within 45 days of receiving the survey results, the principal or director, as the case may be, shall notify the teachers and other school personnel and parents of the

survey results.

(d) Make recommendations to the Legislature and the State Department of Education, based on the survey results and consideration of appropriate federal and state standards, on the feasibility and necessity of conducting statewide lead testing and any additional action needed relating to lead contamination in the schools.

(e) As deemed necessary and appropriate in view of the survey results, develop environmental lead testing methods and standards to ensure the scientific integrity of results, for use by schools and contractors designated by schools for that purpose.

(f) Evaluate the most current cost-effective lead abatement technologies.

(g) Work with the State Department of Education to develop voluntary guidelines for distribution to requesting schools to ensure that lead hazards are minimized in the course of school repair and maintenance programs and abatement procedures.

SEC. 37. Section 32243 of the Education Code is amended to read:

32243. (a) When a school subject to this article has been determined to have significant risk factors for lead, the school shall be advised of this finding, and the school shall notify parents of the provisions of the Childhood Lead Poisoning Prevention Act of 1991 (pursuant to Article 4.6 (commencing with Section 372) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code). Within 45 days of receiving this finding, the school principal or the director of the schoolsite shall notify the teachers, other personnel, and the parents of the finding.

(b) Subsequent to the implementation by the state of a certification and training program for environmental lead testing and abatement, any school that undertakes any action to abate existing risk factors for lead shall utilize trained and state certified contractors, inspectors, and workers.

SEC. 38. Section 32244 of the Education Code is amended to read:

32244. Lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility.

SEC. 39. Section 32245 of the Education Code is amended to read:

32245. Funding to implement this article shall be provided from the Child Health and Safety Fund created under Chapter 4.6 (commencing with Section 18285) of Part 6 of Division 9 of the Welfare and Institutions Code, upon appropriation by the Legislature pursuant to Section 18285 of the Welfare and Institutions Code.

SEC. 40. Section 41320.1 of the Education Code is amended to read:

41320.1. Acceptance by the district of the apportionments made pursuant to Section 41320 shall constitute agreement by the district to all of the following conditions:

(a) The Superintendent of Public Instruction shall appoint a trustee who has recognized expertise in management and finance, and who shall be bonded. The expenses incurred by the trustee and the costs of the bonding shall be borne by the district. The superintendent shall establish the terms and conditions of the employment, including the remuneration of the trustee. The trustee shall serve at the pleasure of, and report directly to, the superintendent. The trustee shall serve until the loan called for by this section is repaid, the district has adequate fiscal systems and controls in place, and the superintendent has determined that the district's future compliance with the fiscal plan approved for the district under Section 41320 is probable. Before the district repays the loan, including interest, the recipient of the loan shall select an auditor from a list established by the superintendent and the Controller to conduct an audit of its fiscal systems. If the fiscal systems are deemed to be inadequate, the superintendent may retain the trustee until the deficiencies are corrected. The cost of this audit and any additional cost of the trustee shall be borne by the district.

Notwithstanding any other provision of law, all reports submitted to the trustee shall be public records.

(b) The trustee appointed by the superintendent shall monitor and review the operation of the district. During the period of his or her service, the trustee may stay or rescind any action of the local district governing board that, in the judgment of the trustee, may affect the financial condition of the district. The Superintendent of Public Instruction may establish timelines and prescribe formats for reports and other materials to be used by the trustee to monitor and review the operations of the district. The trustee shall approve or reject all reports and other materials required from the district as a condition of receiving the apportionment. The superintendent, upon the recommendation of the trustee, may reduce any apportionment to the district in an amount up to two hundred dollars ($200) per day for each late or unacceptable report or other material required under Part 24 (commencing with Section 41000), and shall report to the Legislature any failure of the district to comply with the requirements of this section. If the Superintendent of Public Instruction determines, at any time, that the fiscal plan approved for the district under Section 41320 is unsatisfactory, he or she may modify the plan as necessary, and the district shall comply with the plan as modified.

(c) At the request of the Superintendent of Public Instruction, the Controller shall transfer to the State Department of Education, from any apportionment to which the district would otherwise have been entitled pursuant to Section 42238, the amount necessary to pay the expenses incurred by the trustee, the costs of the trustee's bonding, and any associated costs incurred by the county superintendent of schools.

(d) For the fiscal year in which the apportionments are disbursed

and each year thereafter, the Controller, or his or her designee, shall cause an audit to be conducted of the books and accounts of the district, in lieu of the audit required by Section 41020. At the Controller's discretion, the audit may be conducted by the Controller, his or her designee, or an auditor selected by the district and approved by the Controller. The costs of these audits shall be borne by the district. These audits shall be required until the Controller determines, in consultation with the Superintendent of Public Instruction, that the district is financially solvent, but in no event earlier than one year following the implementation of the plan or later than the time the apportionment made is repaid, including interest. In addition, the Controller shall conduct quality control reviews pursuant to subdivision (c) of Section 14504.2.

(e) For all purposes of errors and omissions liability insurance, the trustee appointed pursuant to this section shall be deemed to be an employee of the local education agency to which he or she is assigned.

SEC. 41. Section 42238.15 of the Education Code is amended to read:

42238.15. (a) Notwithstanding any other provision of law, and in lieu of any inflation or cost-of-living adjustment otherwise authorized for any of the programs enumerated in subdivision (b), state funding for the programs enumerated in subdivision (b) shall be increased annually by the product of the following:

(1) The sum of 1.0 plus the percentage change determined under subdivision (b) of Section 42238.1.

(2) The sum of 1.0 plus the percentage of increase, from the prior fiscal year to the current fiscal year, in each of the workload factors described in subdivision (b).

(b) The programs for which annual state funding increases are determined under this section, and the factors used to measure workload for each of those programs, are as follows:

(1) Special education programs and services, as measured by the regular second principal apportionment average daily attendance for kindergarten and grades 1 to 12, inclusive.

(2) Child care and development programs, and preschool programs, as measured by the state population of children up to and including four years of age.

(3) Instructional materials for kindergarten and grades 1 to 8, inclusive, as measured by enrollment in kindergarten and grades 1 to 8, inclusive.

(4) Instructional materials for grades 9 to 12, inclusive, as measured by enrollment in those grades.

(5) Regional occupational programs and centers, as measured by enrollment in grades 11 and 12.

(6) School improvement programs in kindergarten and grades 1 to 6, inclusive, as measured by enrollment in kindergarten and grades 1 to 6, inclusive.

(7) School improvement programs in grades 7 to 12, inclusive, as

measured by enrollment in those grades.

(8) Economic impact aid, as measured by the number of children of ages 5 to 17 years, inclusive, from families that receive Aid to Families with Dependent Children and the number of pupils of limited English proficiency, as identified pursuant to Section 52163.

(9) Staff development programs, as measured by enrollment in kindergarten and grades 1 to 12, inclusive.

(10) Gifted and talented education programs, as measured by enrollment in kindergarten and grades 1 to 12, inclusive.

SEC. 42. Section 44010 of the Education Code is amended to read:

44010. "Sex offense," as used in Sections 44346, 44425, 44436, 44836, 45123, and 45304, means any one or more of the offenses listed below:

(a) Any offense defined in Section 261.5, 264.1, 266, 267, 285, 286, 288, 288a, 289, 311.3, 311.4, 313.1, 647.6, or former Section 647a, subdivision (a), (b), or (c) of Section 243.4, paragraph (1), (2), (3), or (4) of subdivision (a) of Section 261, subdivision (b) of Section 311.2, or subdivision (a) or (d) of Section 647 of the Penal Code.

(b) Any offense defined in former subdivision 5 of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision 2 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.

(d) Any offense defined in former subdivision 1 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.

(e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.

(f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if that offense was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975–76 Regular Session of the Legislature committed prior to the effective date of the amendment.

(h) Any attempt to commit any of the above-mentioned offenses.

(i) Any offense committed or attempted in any other state which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses.

(j) Any conviction for an offense resulting in the requirement to register as a sex offender pursuant to Section 290 of the Penal Code.

SEC. 43. Section 44253.6 of the Education Code is amended to read:

44253.6. (a) A teacher who earned a passing score on a part of the examination for the bilingual cross-cultural certificate that was administered by the commission pursuant to Sections 44253.5 and 44253.6 as those sections existed on December 31, 1992, shall not be required by the commission, as a requirement for earning the certificate described in Section 44253.3 or 44253.4, to take a duplicate examination within nine years of the date on which the teacher earned the passing score.

(b) A teacher who has passed both sections of the examination for the language development specialist certificate of competence that was administered by the commission pursuant to Article 3.5 (commencing with Section 44475) of Chapter 3 as that article existed on December 31, 1992, shall have five years from the date of his or her earliest passing score to complete the other requirements and apply for the language development specialist certificate of competence.

(c) After the commission begins to administer the examinations required by Section 44253.5, the commission shall continue to administer, until June 30, 1995, the examination for the language development specialist certificate administered pursuant to Article 3.5 (commencing with Section 44475) of Chapter 3 as that article existed on December 31, 1992, solely to those individuals who, on or after June 30, 1992, were enrolled in language development specialist programs approved by the commission pursuant to that article.

(d) Each certificate of bilingual cross-cultural competence issued by the commission pursuant to Sections 44253.5 and 44253.6 as those sections existed on December 31, 1992, and certificate of competence as language development specialist issued by the commission pursuant to Article 3.5 (commencing with Section 44475) of Chapter 3 as it existed on December 31, 1992, shall remain valid as long as the holder's prerequisite teaching credential for the certificate as specified in Sections 44253.5 and 44253.6 and Article 3.5 (commencing with Section 44475) of Chapter 3 remains valid.

SEC. 44. Section 47602 of the Education Code is amended to read:

47602. (a) The total number of charter schools operating in this state in any school year shall not exceed 100, with not more than 10 charter schools in any single school district. For the purposes of implementing this section, the State Board of Education shall assign a number to each charter notice it receives pursuant to subdivision (i) of Section 47605, based on the chronological order in which the notice is received.

(b) No charter shall be granted under this part that authorizes the conversion of any private school to a charter school.

SEC. 45. Section 47605 of the Education Code is amended to read:

47605. (a) A petition for the establishment of a charter school

within any school district may be circulated by any one or more persons seeking to establish the charter school. After the petition has been signed by not less than 10 percent of the teachers currently employed by the school district, or by not less than 50 percent of the teachers currently employed at one school of the district, it may be submitted to the governing board of the school district for review.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the board shall consider the level of employee and parental support for the petition. Following review of the petition and the public hearing, the governing board shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. A school district governing board may grant a charter for the operation of a school under this part if it determines that the petition contains the number of signatures required by subdivision (a), a statement of each of the conditions described in subdivision (d), and descriptions of all of the following:

(1) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(2) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.

(3) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(4) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(5) The qualifications to be met by individuals to be employed by the school.

(6) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(7) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

(8) Admission requirements, if applicable.

(9) The manner in which an annual audit of the financial and programmatic operations of the school is to be conducted.

(10) The procedures by which pupils can be suspended or

expelled.

(11) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(12) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(13) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(c) Charter schools shall meet the statewide performance standards and conduct the pupil assessments required pursuant to Section 60602.5.

(d) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(e) No governing board of a school district shall require any employee of the school district to be employed in a charter school.

(f) No governing board of a school district shall require any pupil enrolled in the school district to attend a charter school.

(g) The governing board may require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects upon the school and upon the school district.

(h) In reviewing petitions for the establishment of charter schools within the school district, the school district governing board shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the State Department of Education under Section 54032.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the State Board of Education.

(j) (1) If the governing board of the school district denies a charter, the county superintendent of schools, at the request of the petitioner or petitioners, shall select and convene a review panel to

review the action of the governing board. The review panel shall consist of three governing board members from other school districts in the county and three teachers from other school districts in the county unless only one school district is located in the county, in which case the panel members shall be selected from school districts in adjoining counties.

(2) If the review panel determines that the governing board failed to appropriately consider the charter request, or acted in an arbitrary manner in denying the request, the review panel shall request the governing board to reconsider the charter request. In the case of a tie vote of the panel, the county superintendent of schools shall vote to break the tie.

(3) If, upon reconsideration, the governing board denies a charter, the county board of education, at the request of the petitioner or petitioners, shall hold a public hearing in the manner described in subdivision (b) and, accordingly, may grant a charter. A charter school for which a charter is granted by a county board of education pursuant to this paragraph shall qualify fully as a charter school for all funding and other purposes of this part.

SEC. 46. Section 48204 of the Education Code is amended to read:

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

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

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

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

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

(d) A pupil whose parent or legal guardian has established the residence of the pupil in a home located within the boundaries of that school district, provided that home is properly licensed as required by law. The person maintaining the home shall provide evidence to the school that a current license is in effect or that a license is not required under the law.

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

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

(1) Nothing in this subdivision requires the school district within

which the pupil's parents or guardians are employed to admit the pupil to its schools. Districts may not, however, refuse to admit pupils under this subdivision on the basis, except as expressly provided in this subdivision, of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration.

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

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

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

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

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

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

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

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

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

(g) This section shall remain in effect only until June 30, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before June 30, 1995, deletes or extends that date. If that date is not deleted or extended, then, on and after July 1, 1995, pursuant

to Section 9611 of the Government Code, Section 48204, as amended by Section 3 of Chapter 1191 of the Statutes of 1980, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 47. Section 51220 of the Education Code is amended to read:

51220. The adopted course of study for grades 7 to 12, inclusive, shall offer courses in the following areas of study:

(a) English, including knowledge of and appreciation for literature, language, and composition, and the skills of reading, listening, and speaking.

(b) Social sciences, drawing upon the disciplines of anthropology, economics, geography, history, political science, psychology, and sociology, designed to fit the maturity of the pupils. Instruction shall provide a foundation for understanding the history, resources, development, and government of California and the United States of America; instruction in our American legal system, the operation of the juvenile and adult criminal justice systems, and the rights and duties of citizens under the criminal and civil law and the State and Federal Constitutions; the development of the American economic system, including the role of the entrepreneur and labor; the relations of persons to their human and natural environment; eastern and western cultures and civilizations; human rights issues, with particular attention to the study of the inhumanity of genocide, slavery, and the Holocaust, and contemporary issues.

(c) Foreign language or languages, beginning not later than grade 7, designed to develop a facility for understanding, speaking, reading, and writing the particular language.

(d) Physical education, with emphasis given to physical activities that are conducive to health and to vigor of body and mind.

(e) Science, including the physical and biological aspects, with emphasis on basic concepts, theories, and processes of scientific investigation and on the place of humans in ecological systems, and with appropriate applications of the interrelation and interdependence of the sciences.

(f) Mathematics, including instruction designed to develop mathematical understandings, operational skills, and insight into problem-solving procedures.

(g) Fine arts, including art, music, or drama, with emphasis upon development of aesthetic appreciation and the skills of creative expression.

(h) Applied arts, including instruction in the areas of consumer and homemaking education, industrial arts, general business education, or general agriculture.

(i) Vocational-technical education designed and conducted for the purpose of preparing youth for gainful employment in the occupations and in the numbers that are appropriate to the personnel needs of the state and the community served and relevant to the career desires and needs of the pupils.

(j) Automobile driver education, designed to develop a

knowledge of the provisions of the Vehicle Code and other laws of this state relating to the operation of motor vehicles, a proper acceptance of personal responsibility in traffic, a true appreciation of the causes, seriousness and consequences of traffic accidents, and to develop the knowledge and attitudes necessary for the safe operation of motor vehicles. A course in automobile driver education shall include education in the safe operation of motorcycles.

(k) Other studies as may be prescribed by the governing board.

SEC. 48. Section 52772 of the Education Code is amended to read:

52772. School districts and county offices of education may submit applications to the superintendent for grants to develop and implement programs for pupil participation in entrepreneurial activities. Each school district or county office of education that wishes to apply shall do all of the following:

(a) Submit a plan outlining the proposed development of the entrepreneur program, including, but not limited to, a description of how the program will operate. Applicants shall be encouraged to collaborate with the business departments of local colleges and universities in developing the local plan.

(b) Serve pupils in the program who are economically disadvantaged, as defined in the Job Training Partnership Act, Public Law 97-300, as it exists on January 1, 1992, and who are susceptible to frequent absenteeism, truancy, or tardiness, or who are at risk of dropping out of school, for among other reasons, pregnancy or marriage, financial need, the lack of basic skills, or low self-esteem.

(c) Demonstrate that the program will be under the direct supervision and control of the applicant school district, regional occupational center, or county office of education.

(d) Demonstrate that the program is designed to do the following:

(1) Introduce the fundamentals of entrepreneurship, and provide business education, support, and resources that are not monetary, including, but not limited to, books, cash registers, and models, for pupils to start their business.

(2) Introduce pupils to a variety of university faculty, staff, students, and alumni, and representatives of the business community.

(3) Identify areas of individual pupil needs and provide resources and referrals to meet those needs.

(4) Support the development of entrepreneurial curriculum, expertise, and guidance.

SEC. 49. Section 56345 of the Education Code is amended to read:

56345. (a) The individualized education program is a written statement determined in a meeting of the individualized education program team and shall include, but not be limited to, all of the following:

(1) The present levels of the pupil's educational performance.

(2) The annual goals, including short-term instructional objectives.

(3) The specific special educational instruction and related

services required by the pupil.

(4) The extent to which the pupil will be able to participate in regular educational programs.

(5) The projected date for initiation and the anticipated duration of the programs and services included in the individualized education program.

(6) Appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

(b) When appropriate, the individualized education program shall also include, but not be limited to, all of the following:

(1) Prevocational career education for pupils in kindergarten and grades 1 to 6, inclusive, or pupils of comparable chronological age.

(2) Vocational education, career education or work experience education, or any combination thereof, in preparation for remunerative employment, including independent living skill training for pupils in grades 7 to 12, inclusive, or comparable chronological age, who require differential proficiency standards pursuant to Section 51215.

(3) For pupils in grades 7 to 12, inclusive, any alternative means and modes necessary for the pupil to complete the district's prescribed course of study and to meet or exceed proficiency standards for graduation in accordance with Section 51215.

(4) For individuals whose primary language is other than English, linguistically appropriate goals, objectives, programs and services.

(5) Extended school year services when needed, as determined by the individualized education program team.

(6) Provision for the transition into the regular class program if the pupil is to be transferred from a special class or center, or nonpublic, nonsectarian school into a regular class in a public school for any part of the schoolday, including the following:

(A) A description of activities provided to integrate the pupil into the regular education program. The description shall indicate the nature of each activity, and the time spent on the activity each day or week.

(B) A description of the activities provided to support the transition of pupils from the special education program into the regular education program.

(7) For pupils with low incidence disabilities, specialized services, materials, and equipment, consistent with guidelines established pursuant to Section 56136.

(c) It is the intent of the Legislature in requiring individualized education programs that the district, special education local plan area, or county office is responsible for providing the services delineated in the individualized education program. However, the Legislature recognizes that some pupils may not meet or exceed the growth projected in the annual goals and objectives of the pupil's individualized education program.

(d) Pursuant to subdivision (d) of Section 51215, a pupil's

individualized education program shall also include the determination of the individualized education program team as to whether differential proficiency standards shall be developed for the pupil. If differential proficiency standards are to be developed, the individualized education program shall include these standards.

SEC. 50. Section 60004 of the Education Code is amended to read:

60004. (a) Notwithstanding any other provision of law, the selection and adoption of instructional materials pursuant to this part, including related activities such as the approval of curriculum frameworks and instructional materials criteria, shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Any standards and criteria adopted by the State Board of Education shall be filed as regulations by the Secretary of State upon affidavit of the Superintendent of Public Instruction.

(b) Notwithstanding any other provision of law, any instructional materials, curriculum frameworks, and related standards and criteria adopted by the state board pursuant to this part prior to the effective date of this section are hereby deemed in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Any such standards and criteria shall be filed with the Secretary of State as regulations in the California Code of Regulations upon affidavit of the Superintendent of Public Instruction.

(c) On or before January 30, 1993, the state board shall report to the Governor and the Legislature regarding the costs and benefits of fully conforming the selection and adoption process specified in this part with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The report also shall include alternative proposals that generate the same or greater benefits at less cost and that ensure adequate public involvement and conformity to statutory authority.

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

SEC. 51. Section 66301 of the Education Code is amended to read:

66301. (a) Neither the Regents of the University of California, the Trustees of the California State University, nor the governing board of any community college district shall make or enforce any rule subjecting any student to disciplinary sanction solely on the basis of conduct that is speech or other communication that, when engaged in outside a campus of those institutions, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article 1 of the California Constitution.

(b) Any student enrolled in an institution, as specified in subdivision (a), that has made or enforced any rule in violation of subdivision (a) may commence a civil action to obtain appropriate injunctive and declaratory relief as determined by the court. Upon

motion, a court may award attorney's fees to a prevailing plaintiff in a civil action pursuant to this section.

(c) Nothing in this section shall be construed to authorize any prior restraint of student speech.

(d) Nothing in this section prohibits the imposition of discipline for harassment, threats, or intimidation, unless constitutionally protected.

(e) Nothing in this section prohibits an institution from adopting rules and regulations that are designed to prevent hate violence, as defined in subdivision (a) of Section 4 of Chapter 1363 of the Statutes of 1992, from being directed at students in a manner that denies them their full participation in the educational process, so long as the rules and regulations conform to standards established by the First Amendment to the United States Constitution and Section 2 of Article 1 of the California Constitution for citizens generally.

SEC. 52. Section 67358 of the Education Code is amended and renumbered to read:

67357.5. Notwithstanding any other provision of this bond act, or of the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), if the Treasurer sells bonds pursuant to this bond act that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law, or take any other action with respect to the investment and use of those bond proceeds, as may be required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

SEC. 53. Section 69274 of the Education Code is amended to read:

69274. The duties of the commission shall be:

(a) To identify specific areas of the state where unmet priority needs for primary care family physicians exist.

(b) To establish standards for family practice training programs and family practice residency programs, postgraduate osteopathic medical programs in family practice, and primary care physician's assistants programs and programs that train primary care nurse practitioners, including appropriate provisions to encourage family physicians, osteopathic family physicians, primary care physician's assistants, and primary care nurse practitioners who receive training in accordance with this article to provide needed services in areas of unmet need within the state. Standards for family practice residency programs shall provide that all such residency programs contracted for pursuant to this article shall both meet the Residency Review Committee on Family Practice's "Essentials" for Residency Training in Family Practice and be approved by the Residency Review

Committee on Family Practice. Standards for postgraduate osteopathic medical programs in family practice, as approved by the American Osteopathic Association Committee on Postdoctoral Training for interns and residents, shall be established to meet the requirements of this subdivision in order to ensure that those programs are comparable to the other programs specified in this subdivision. Every program shall include a component of training designed for medically underserved multicultural communities, lower socioeconomic neighborhoods, or rural communities, and shall be organized to prepare program graduates for service in those neighborhoods and communities. Medical schools receiving funds under this article shall have programs or departments that recognize family practice as a major independent specialty. Existence of a written agreement of affiliation or association between a hospital and an accredited medical school shall be regarded by the commission as a favorable factor in considering recommendations to the director for allocation of funds appropriated to the state medical contract program established under this article.

For purposes of this paragraph, "family practice" includes the general practice of medicine by osteopathic physicians.

(c) To review and make recommendations to the Director of the Office of Statewide Health Planning and Development concerning the funding of family practice programs or departments and family practice residencies and programs for the training of primary care physician's assistants and primary care nurse practitioners that are submitted to the Health Professions Development Program for participation in the contract program established by this article. If the commission determines that a program proposal that has been approved for funding or that is the recipient of funds under this article does not meet the standards established by the commission, it shall submit to the Director of the Office of Statewide Health Planning and Development and the Legislature a report detailing its objections. The commission may request the Office of Statewide Health Planning and Development to make advance allocations for program development costs from amounts appropriated for the purposes of this article.

(d) To establish contract criteria and single per-student and per-resident capitation formulas that shall determine the amounts to be transferred to institutions receiving contracts for the training of family practice students and residents and primary care physician's assistants and primary care nurse practitioners pursuant to this article, except as otherwise provided in subdivision (e). Institutions applying for or in receipt of contracts pursuant to this article may appeal to the director for waiver of these single capitation formulas. The director may grant the waiver in exceptional cases upon a clear showing by the institution that a waiver is essential to the institution's ability to provide a program of a quality comparable to those provided by institutions that have not received waivers, taking into account the public interest in program cost-effectiveness. Recipients

of funds appropriated by this article shall, as a minimum, maintain the level of expenditure for family practice or primary care physician's assistant or family care nurse practitioner training that was provided by the recipients during the 1973–74 fiscal year. Funds appropriated under this article shall be used to develop new programs or to expand existing programs, and shall not replace funds supporting current family practice training programs. Institutions applying for or in receipt of contracts pursuant to this article may appeal to the director for waiver of this maintenance of effort provision. The director may grant the waiver if he or she determines that there is reasonable and proper cause to grant the waiver.

(e) To review and make recommendations to the Director of the Office of Statewide Health Planning and Development concerning the funding of special programs that may be funded on other than a capitation rate basis. These special programs may include the development and funding of the training of primary health care teams of family practice residents or family physicians and primary care physician's assistants or primary care nurse practitioners; undergraduate medical education programs in family practice; and programs that link training programs and medically underserved communities in California that appear likely to result in the location and retention of training program graduates in those communities. These special programs also may include the development phase of new family practice residency, primary care physician's assistant programs, or primary care nurse practitioner programs.

The commission shall establish standards and contract criteria for special programs recommended under this subdivision.

(f) To review and evaluate these programs regarding compliance with this article. One standard for evaluation shall be the number of recipients who, after completing the program, actually go on to serve in areas of unmet priority for primary care family physicians in California.

(g) To review and make recommendations to the Director of the Office of Statewide Health Planning and Development on the awarding of funds for the purpose of making loan assumption payments for medical students who contractually agree to enter a primary care specialty and practice primary care medicine for a minimum of three consecutive years following completion of a primary care residency training program pursuant to Chapter 1.5 (commencing with Section 69300).

SEC. 54. Section 88116 of the Education Code is amended to read:

88116. (a) Whenever, during the absence of an employee of a community college district or student body association operating under Sections 76060 to 76065, inclusive, in the active military service of the United States of America during any period of national emergency declared by the President of the United States of America, or during any war in which the United States of America is engaged, the position held by that employee at the time of his or her entrance into that military service is placed within the classified

service of the district and an eligible list is established for that position through competitive examination, the employee shall, at his or her request made within six months after leaving the active military service under honorable conditions, be given immediately an examination of substantially the same character and scope as the competitive examination through which the original eligibility list was established. The grade secured by that employee in that examination shall be deemed to be the grade the employee would have secured had he or she taken the competitive examination as a veteran, and the employee shall be placed on the original eligibility list accordingly with all the rights and privileges to which he or she would have been entitled had he or she had that place on the original eligibility list at the time of its establishment.

(b) Notwithstanding subdivision (a), any member of the Military Reserve or the National Guard who is called to active duty, either voluntarily or involuntarily, during any period of national emergency declared by the President of the United States of America, or during any war in which the United States of America is engaged, shall be entitled to any rights, in addition to the rights accorded under subdivision (a), that are accorded that member under the federal Veterans' Reemployment Rights Law or any other applicable provision of federal law.

SEC. 55. Section 88127 of the Education Code is amended to read:

88127. Classified employees shall be subject to layoff for lack of work or lack of funds. Whenever a classified employee is laid off, the order of layoff within the class shall be determined by length of service. The employee who has been employed the shortest time in the class, plus higher classes, shall be laid off first. Reemployment shall be in the reverse order of layoff.

For purposes of this section, for service commencing or continuing after July 1, 1971, "length of service" means all hours in paid status, whether during the school year, a holiday, recess, or any period that a school is in session or closed, but does not include any hours compensated solely on an overtime basis as provided for in Section 88027. Nothing in this section shall preclude the governing board of a community college district from entering into an agreement with the exclusive representative of the classified employees that defines "length of service" to mean the hire date.

If a governing board enters into an agreement with the exclusive representative of classified employees that defines "length of service" to mean the hire date, the governing board may define "length of service" to mean the hire date for a classification of employee not represented by any exclusive bargaining unit.

Nothing in this section shall preclude the granting of "length of service" credit for time spent on unpaid illness leave, or unpaid industrial accident leave. In addition, for military leave of absence, "length of service" credit shall be granted pursuant to Section 88116.

"Hours in paid status" shall not be interpreted to mean any service performed prior to entering into a probationary or permanent status

in the classified service of the district except service in restricted positions as provided in this chapter.

SEC. 56. Section 89701 of the Education Code is amended to read:

89701. The trustees are authorized to acquire, pursuant to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code) or by lease or other means, real property and to construct, operate, and maintain motor vehicle parking facilities thereon for state university officers, employees, students, or other persons. The trustees may prescribe the terms and conditions of the parking, and of parking on facilities existing on the effective date of this section, including the payment of parking fees in the amounts and under the circumstances determined by the trustees. Varying rates of parking fees may be established for different localities or for different parking facilities. In determining rates of parking fees, the trustees may consider the rates charged in the same locality by other public agencies and by private employers for employee parking, and the rates charged to students by other universities and colleges.

Except as otherwise provided in this section, revenues received by the trustees from any of the motor vehicle parking facilities, as well as from all parking facilities existing on the effective date of this section, shall be transmitted to the Treasurer and shall be deposited by that officer in the State Treasury to the credit of the State University Parking Revenue Fund, which fund is hereby created. The trustees may pledge all or any part of the revenues in connection with bonds or notes issued pursuant to the State University Revenue Bond Act of 1947 (Article 2 (commencing with Section 90010) of Chapter 8), in which case the revenues shall be deposited, transmitted, and used in the manner provided by that act. All revenues received by the trustees from parking facilities, to the extent not pledged in connection with bonds or notes issued pursuant to the State University Revenue Bond Act of 1947, are hereby appropriated, without regard to fiscal years, to the trustees for the acquisition, construction, operation, and maintenance of motor vehicle parking facilities on real property acquired hereunder or on real property otherwise under the jurisdiction of the trustees, and for the study, development, enhancement, operation, and maintenance of alternate methods of transportation for officers, students, and employees of the California State University. The trustees shall allocate the funds for the construction of parking facilities for each of the California State University campuses only after programs incorporating alternate methods of transportation have been thoroughly investigated and considered, as determined by the alternative transportation committees of each campus and the trustees, in consultation with students and local government officials. Moneys in the State University Parking Revenue Fund may be invested by the Treasurer, upon approval of the trustees, in those eligible securities listed in Section 16430 of the Government Code. All interest or other earnings received pursuant to the investments

shall be collected by the Treasurer, and shall be deposited in the State Treasury to the credit of the State University Parking Revenue Fund.

The Legislature, by this section, does not intend to authorize the institution of a private parking program unrelated to state purposes in competition with private industry.

If any provision of this section is in conflict with any provision of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if one or more provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 57. Section 94367 of the Education Code is amended to read:

94367. (a) No private postsecondary educational institution shall make or enforce any rule subjecting any student to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside the campus or facility of a private postsecondary institution, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article 1 of the California Constitution.

(b) Any student enrolled in a private postsecondary institution that has made or enforced any rule in violation of subdivision (a) may commence a civil action to obtain appropriate injunctive and declaratory relief as determined by the court. Upon motion, a court may award attorney's fees to a prevailing plaintiff in a civil action pursuant to this section.

(c) This section does not apply to any private postsecondary educational institution that is controlled by a religious organization, to the extent that the application of this section would not be consistent with the religious tenets of the organization.

(d) Nothing in this section shall be construed to authorize any prior restraint of student speech.

(e) Nothing in this section prohibits the imposition of discipline for harassment, threats, or intimidation, unless constitutionally protected.

(f) Nothing in this section prohibits an institution from adopting rules and regulations that are designed to prevent hate violence, as defined in subdivision (a) of Section 4 of Chapter 1363 of the Statutes of 1992, from being directed at students in a manner that denies them their full participation in the educational process, so long as the rules and regulations conform to standards established by the First Amendment to the United States Constitution and Section 2 of Article 1 of the California Constitution for citizens generally.

SEC. 58. Section 3567 of the Elections Code is amended to read:

3567. When the Secretary of State has received the arguments that will be printed in the ballot pamphlet, the Secretary of State,

within five days of receipt thereof, shall send copies of the arguments in favor of the proposition to the authors of the arguments against and copies of the arguments against to the authors of the arguments in favor. The authors may prepare and submit rebuttal arguments not exceeding 250 words, or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument. The rebuttal arguments shall be filed with the Secretary of State no later than a date to be designated by the Secretary of State.

Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

SEC. 59. Section 23512.2 of the Elections Code, as added by Chapter 219 of the Statutes of 1992, is repealed.

SEC. 60. Section 1107 of the Evidence Code is amended to read:

1107. (a) In a criminal action, expert testimony is admissible by either the prosecution or the defense regarding battered women's syndrome, including the physical, emotional, or mental effects upon the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a criminal defendant to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge.

(b) The foundation shall be sufficient for admission of this expert testimony if the proponent of the evidence establishes its relevancy and the proper qualifications of the expert witness. Expert opinion testimony on battered women's syndrome shall not be considered a new scientific technique the reliability of which is unproven.

(c) For purposes of this section, "abuse" and "domestic violence" are defined as provided in Sections 55 and 70 of the Family Code.

(d) This section is intended as a rule of evidence only and no substantive change affecting the Penal Code is intended.

SEC. 61. Section 13080 of the Financial Code is amended to read:

13080. (a) No operator of an automated teller machine in this state shall impose a surcharge upon the usage of that machine for customers using an access device not issued by that operator unless the surcharge is clearly disclosed to the customer prior to completion of any transaction.

(b) As used in this section, "operator," "automated teller machine," "customer," and "access device" have the meanings set forth in Section 13020.

SEC. 62. Section 3203 of the Fish and Game Code is amended to read:

3203. The department shall issue a class 1 domesticated game breeder's license upon the payment of a base fee of eight dollars ($8), as adjusted under Section 713, and a class 2 domesticated game breeder's license upon the payment of a base fee of forty dollars ($40), as adjusted under Section 713.

SEC. 63. Section 14611 of the Food and Agricultural Code is amended to read:

14611. (a) Any licensee whose name appears on the label who

sells or distributes bulk fertilizing materials, as defined in Sections 14517 and 14533, to unlicensed purchasers, shall pay to the director an assessment not to exceed two mills ($0.002) per dollar of sales for all fertilizing materials. Any licensee whose name appears on the label of packaged fertilizing materials, as defined in Sections 14533 and 14551, shall pay to the director an assessment of not to exceed two mills ($0.002) per dollar of sales. The director may, based on the finding and recommendation of the board, reduce the assessment rate to a lower rate that provides sufficient revenue to carry out this chapter.

(b) In addition to the assessment provided in subdivision (a), the director may impose an assessment in an amount not to exceed one mill ($0.001) per dollar of sales for all sales of fertilizing materials, to provide funding for research and education regarding the use and handling of commercial and organic fertilizers, including, but not limited to, any environmental effects.

SEC. 64. Section 15071.5 of the Food and Agricultural Code is amended to read:

15071.5. (a) In lieu of any other penalty provided by this chapter, the director may levy a civil penalty against a person who violates Section 15051, 15053, or 15054, in an amount not to exceed five hundred dollars ($500) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation.

(c) Any person against whom a civil penalty is imposed pursuant to this section may appeal to the director within 10 days of the date of receiving notification of the penalty in accordance with the following procedure:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, and shall state the grounds for the appeal.

(2) Any party may, at the time of filing the appeal or within 10 days thereafter, submit written evidence and a written argument to the director.

(3) The director may authorize a person to present an oral argument on his or her behalf. The person shall submit a request to present an oral argument at the same time the written evidence or written arguments are submitted.

(4) If a request to present an oral argument is granted by the director, the director shall give written notice of the time and place for the oral argument not less than 10 days prior to the date set for oral argument. This time requirement may be altered by an agreement between the director and the appellant.

(5) The director shall decide the appeal on the basis of the oral or written arguments, briefs, and evidence presented to the director.

(6) The director shall render a written decision within 45 days of the date the appeal was received or within 15 days of the date of the oral argument, whichever date is later.

(7) On an appeal pursuant to this section, the director may sustain

the decision, modify the amount of the penalty imposed, or reverse the decision. A copy of the director's decision shall be delivered or mailed to the appellant.

(8) The decision of the director may be reviewed pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) Any funds recovered by the director pursuant to this section shall be deposited in a special account in the Department of Food and Agriculture Fund and, notwithstanding Section 13340 of the Government Code, are continuously appropriated to cover costs related to the enforcement of this division.

SEC. 65. Section 58110 of the Food and Agricultural Code is amended to read:

58110. It is the intent of the Legislature that the program established by this article to implement the federal WIC Farmers' Market Nutrition Act of 1992 (P.L. 102-314) be funded 70 percent by federal funds and 30 percent by private or other funds, as specified by the federal act.

SEC. 66. The heading of Article 4 (commencing with Section 58591) of Chapter 6 of Part 1 of Division 21 of the Food and Agricultural Code is amended to read:

Article 4. Reporting

SEC. 67. Section 74734.5 of the Food and Agricultural Code is amended to read:

74734.5. (a) The director shall operate in the most efficient, cost-effective manner possible in carrying out his or her duties and responsibilities pursuant to this chapter.

(1) The director shall notify the commission of oversight activities and costs that will result in expenses reimbursable by the commission.

(2) The commission shall inform the director which of these activities it will engage in that require oversight and reimbursement of expenses.

(b) The director is not required to provide notification to the commission pursuant to paragraph (1) of subdivision (a) if the director determines that omission of notification is necessary to protect the confidentiality of the parties with respect to any investigation into the activities of the employees of the commission or the actions of the commission.

SEC. 68. Section 3549.1 of the Government Code is amended to read:

3549.1. All the proceedings set forth in subdivisions (a) to (d), inclusive, shall be exempt from the provisions of Sections 965 and 966 of the Education Code, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), unless the parties mutually agree otherwise:

(a) Any meeting and negotiating discussion between a public school employer and a recognized or certified employee organization.

(b) Any meeting of a mediator with either party or both parties to the meeting and negotiating process.

(c) Any hearing, meeting, or investigation conducted by a factfinder or arbitrator.

(d) Any executive session of the public school employer or between the public school employer and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives.

SEC. 69. Section 13923 of the Government Code is amended to read:

13923. The board may approve plans for payroll deduction from the salaries or wages of state officers and employees under subdivision (f) of Section 1151 for charitable contributions to the agency handling the principal combined fund drive in any area. The board shall establish necessary rules and regulations, including the following:

(a) Standards for establishing what constitutes the principal combined fund drive in an area.

(b) A requirement that the agency to receive these contributions shall pay, for deposit in the General Fund, the additional cost to the state of making these deductions and remitting the proceeds, as determined by the Controller.

(c) Provisions for standard amounts of deductions from which each state officer or employee may select the contribution that he or she desires to make, if any.

(d) A prohibition upon state officers or employees authorizing more than one payroll deduction for charitable purposes to be in effect at the same time.

(e) A provision authorizing the Controller to combine in his or her records deductions for employee association dues, if authorized, and charitable deductions, if authorized.

The State Board of Control, in addition, may approve requests of any charitable organization qualified as an exempt organization under Section 23701d of the Revenue and Taxation Code, and paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, which is not an affiliated member beneficiary of the principal combined fund drive to receive designated deductions from the principal fund drive.

The principal combined fund drive agency, any charitable organization which is an affiliated member beneficiary of the principal combined fund drive, and any charitable organization approved by the State Board of Control to receive designated deductions on the payroll authorization form of the principal fund drive, shall certify under penalty of perjury to the State Board of Control that it is in compliance with the Fair Employment and

Housing Act, Part 2.8 (commencing with Section 12900), as a condition of receiving these designated deductions.

The principal combined fund drive shall obtain from the State Board of Control the list of approved nonaffiliated beneficiaries, eligible for designated deductions in its approved drive area, and shall provide this information to each employee at the time of the principal fund drive. The principal combined drive agency shall provide a designation form for the employee to indicate those amounts to be contributed to affiliated and nonaffiliated beneficiaries. The designation form shall consist of a copy for each of the following: (1) the employee, (2) the employee's designated beneficiary agency, and (3) the principal combined fund drive agency. The principal combined fund drive agency shall pay the amount collected for the employee designated beneficiary agency less the amount necessary to reimburse the principal combined fund drive agency for fundraising and administrative expenses. The fee charged for fundraising and administrative cost reimbursement shall be determined by the State Board of Control, published in campaign literature and made available to the employee during the solicitation process.

Nothing contained in this section shall preclude a principal fund drive agency from giving a percentage of the undesignated funds to charities which are not members of the agency handling the principal drive, or honoring an employee's designated deduction to any charitable organization.

SEC. 70. Section 15436 of the Government Code is amended to read:

15436. Five members of the authority shall constitute a quorum. The affirmative vote of a majority of a quorum shall be necessary for any action taken by the authority. A vacancy in the membership of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Each meeting of the authority shall be open to the public and shall be held in accordance with the provisions of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1). Resolutions of the authority need not be published or posted. The authority may delegate by resolution to one or more of its members or its executive director such powers and duties as it may deem proper. The authority may delegate to the executive director the power to enter contracts on behalf of the authority.

SEC. 71. Section 20024.002 of the Government Code is amended to read:

20024.002. (a) Notwithstanding Section 20024.01, "final compensation" for the purposes of determining any pension or benefit with respect to a state member who retires or dies on or after July 1, 1991, means the highest annual compensation which was earnable by the state member during any consecutive 12-month period during his or her membership in the system or which is designated by the application for retirement.

(b) With respect to a state member who retires or dies on or after July 1, 1991, and who was a managerial employee, as defined by subdivision (e) of Section 3513, or a supervisory employee, as defined by subdivision (g) of Section 3513, whose monthly salary range was administratively reduced by 5 percent because of the salary range reductions administratively imposed upon managers and supervisors during the 1991–92 fiscal year, "final compensation" means the highest annual compensation the state member would have earned had his or her salary range not been reduced by the 5-percent reduction. This subdivision shall only apply if the period during which the state member's salary was reduced would have otherwise been included in determining his or her final compensation. The costs, if any, that may result from the use of the higher final compensation shall be paid for by the employer in the same manner as other retirement benefits are funded.

SEC. 72. Section 25830.1 of the Government Code is amended to read:

25830.1. Notwithstanding the uniformity requirement in Section 25830, the Tuolumne County Board of Supervisors may recover solid waste disposal fee revenues which would have been collected on land within the Sonora city limits had statutory authority to levy those fees within incorporated areas been in place for the 1991–92 and subsequent fiscal years. The fee revenue shall be recovered through solid waste disposal fees on incorporated lands over a two-year period beginning with the first year in which statute allows the imposition of the fees on lands within incorporated areas. This section shall become inoperative on July 1, 1995, and this section is repealed on January 1, 1996, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 73. Section 51021 of the Government Code is amended to read:

51021. It is the intent of the Legislature, in enacting this chapter, to do both of the following:

(a) Encourage additional cooperation and coordination between local public health and safety agencies with special emphasis on both of the following:

(1) Local public fire services, because they have the primary responsibility for protecting human life and property when catastrophic releases of hazardous chemicals, fires, or explosions occur.

(2) Operators of oil refineries and chemical plants, in order to help prevent, and if necessary, to control or mitigate, the effects of these occurrences.

(b) Minimize administrative costs necessary to carry out this act so that maximum funding shall be available to support other purposes of the act, such as grants to local agencies.

(c) Nothing contained in this chapter shall be construed to grant any additional regulatory control or authority to preempt local governmental control or to amend any existing local governmental

ordinance or state statute or regulation.

SEC. 74. Section 53312.7 of the Government Code is amended to read:

53312.7. (a) On and after January 1, 1994, a local agency may initiate proceedings to establish a district pursuant to this chapter only if it has first considered and adopted local goals and policies concerning the use of this chapter. The policies shall include at least the following:

(1) A statement of the priority that various kinds of public facilities shall have for financing through the use of this chapter, including public facilities to be owned and operated by other public agencies, including school districts.

(2) A statement concerning the credit quality to be required of bond issues, including criteria to be used in evaluating the credit quality.

(3) A statement concerning steps to be taken to ensure that prospective property purchasers are fully informed about their taxpaying obligations imposed under this chapter.

(4) A statement concerning criteria for evaluating the equity of tax allocation formulas, and concerning desirable and maximum amounts of special tax to be levied against any parcel pursuant to this chapter.

(5) A statement of definitions, standards, and assumptions to be used in appraisals required by Section 53345.8.

(b) The goals and policies adopted by any school district pursuant to subdivision (a) shall include, but not be limited to, a priority access policy which gives priority attendance access to students residing in a community facilities district whose residents have paid special taxes which have, in whole or in part, financed the construction of school district facilities. The degree of priority shall reflect the proportion of each school's financing provided through the community facilities district. In developing a priority access policy for residents of a community facilities district, a school district may incorporate a school district attendance policy including criteria for student assignment such as goals to achieve ethnic, racial, or socioeconomic diversity; federal, state, or court mandates; transportation needs, safe pedestrian routes; grade levels for which facilities were designed; and ensuring students continuity of schooling within any single school year.

SEC. 75. Section 53313.5 of the Government Code is amended to read:

53313.5. A community facilities district may also finance the purchase, construction, expansion, improvement, or rehabilitation of any real or other tangible property with an estimated useful life of five years or longer or may finance planning and design work which is directly related to the purchase, construction, expansion, or rehabilitation of any real or tangible property. The facilities need not be physically located within the district. A district may not lease out facilities which it has financed except pursuant to a lease agreement

or annexation agreement entered into prior to January 1, 1988. A district may only finance the purchase of facilities whose construction has been completed, as determined by the legislative body, before the resolution of formation to establish the district is adopted pursuant to Section 53325.1, except that a district may finance the purchase of facilities completed after the adoption of the resolution of formation if the facility was constructed as if it had been constructed under the direction and supervision, or under the authority of, the local agency. For example, a community facilities district may finance facilities, including, but not limited to, the following:

(a) Local park, recreation, parkway, and open-space facilities.

(b) Elementary and secondary schoolsites and structures provided that the facilities meet the building area and cost standards established by the State Allocation Board.

(c) Libraries.

(d) Child care facilities, including costs of insuring the facilities against loss, liability insurance in connection with the operation of the facility, and other insurance costs relating to the operation of the facilities, but excluding all other operational costs. However, the proceeds of bonds issued pursuant to this chapter shall not be used to pay these insurance costs.

(e) The district may also finance the construction or undergrounding of water transmission and distribution facilities, natural gas pipeline facilities, telephone lines, facilities for the transmission or distribution of electrical energy, and cable television lines to provide access to those services to customers who do not have access to those services or to mitigate existing visual blight. The district may enter into an agreement with a public utility to utilize those facilities to provide a particular service and for the conveyance of those facilities to the public utility. If the facilities are conveyed to the public utility, the agreement shall provide for a refund by the public utility to the district or improvement area thereof for the cost of the facilities. Any reimbursement made to the district shall be utilized to reduce or minimize the special tax levied within the district or improvement area, or to construct or acquire additional facilities within the district or improvement area, as specified in the resolution of formation.

(f) The district may also finance the acquisition, improvement, rehabilitation, or maintenance of any real or other tangible property, whether privately or publicly owned, for the purposes described in subdivision (e) of Section 53313.

(g) The district may also pay in full all amounts necessary to eliminate any fixed special assessment liens or to pay, repay, or defease any obligation to pay or any indebtedness secured by any tax, fee, charge, or assessment levied within the area of a community facilities district or may pay debt service on that indebtedness. In addition, tax revenues of a district may be used to make lease or debt service payments on any lease, lease purchase contract, or certificate

of participation used to finance authorized district facilities.

(h) Any other governmental facilities which the legislative body creating the community facilities district is authorized by law to contribute revenue to, or construct, own, or operate. However, the district shall not operate or maintain or, except as otherwise provided in subdivisions (e) and (f), have any ownership interest in any facilities for the transmission or distribution of natural gas, telephone service, or electrical energy.

(i) (1) A district may also pay for the following:

(A) Work deemed necessary to bring buildings or real property, including privately owned buildings or real property, into compliance with seismic safety standards or regulations. Only work certified as necessary to comply with seismic safety standards or regulations by local building officials may be financed. No project involving the dismantling of an existing building and its replacement by a new building, nor the construction of a new or substantially new building may be financed pursuant to this subparagraph. Work on qualified historical buildings or structures shall be done in accordance with the State Historical Building Code (Part 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety Code).

(B) In addition, within any county or area designated by the President of the United States or by the Governor as a disaster area or for which the Governor has proclaimed the existence of a state of emergency because of earthquake damage, a district may also pay for any work deemed necessary to repair any damage to real property directly or indirectly caused by the occurrence of an earthquake cited in the President's or the Governor's designation or proclamation, or by aftershocks associated with that earthquake, including work to reconstruct, repair, shore up, or replace any building damaged or destroyed by the earthquake, and specifically including, but not limited to, work on any building damaged or destroyed in the Loma Prieta earthquake which occurred on October 17, 1989, or by its aftershocks. Work may be financed pursuant to this subparagraph only on property or buildings identified in a resolution of intention to establish a community facilities district adopted within seven years of the date on which the county or area is designated as a disaster area by the President or by the Governor or on which the Governor proclaims for the area the existence of a state of emergency.

(2) Work on privately owned property, including reconstruction or replacement of privately owned buildings pursuant to subparagraph (B) of paragraph (1), may be financed by a tax levy only if all of the votes cast on the question of levying the tax, vote in favor of levying the tax, or with the prior written consent to the tax of the owners of all property which may be subject to the tax, in which case the prior written consent shall be deemed to constitute a vote in favor of the tax and any associated bond issue. Any district created to finance seismic safety work on privately owned buildings,

including repair, reconstruction, or replacement of privately owned buildings pursuant to this subdivision, shall consist only of lots or parcels on which the legislative body finds that the buildings to be worked on, repaired, reconstructed, or replaced, pursuant to this subdivision, are located or were located before being damaged or destroyed by the earthquake cited pursuant to subparagraph (B) of paragraph (1) or by the aftershocks of that earthquake.

(j) A district also may pay for the following:

(1) Work deemed necessary to repair and abate damage caused to privately owned buildings and structures by soil deterioration. "Soil deterioration" means a chemical reaction by soils that causes structural damage or defects in construction materials including concrete, steel, and ductile or cast iron. Only work certified as necessary by local building officials may be financed. No project involving the dismantling of an existing building or structure and its replacement by a new building or structure, nor the construction of a new or substantially new building or structure may be financed pursuant to this paragraph.

(2) Work on privately owned buildings and structures pursuant to this subdivision, including reconstruction, repair, and abatement of damage caused by soil deterioration, may only be financed by a tax levy if all of the votes cast on the question of levying the tax vote in favor of levying the tax. Any district created to finance the work on privately owned buildings or structures, including reconstruction, repair, and abatement of damage caused by soil deterioration, shall consist only of lots or parcels on which the legislative body finds that the buildings or structures to be worked on pursuant to this subdivision suffer from soil deterioration.

SEC. 76. Section 53340.2 of the Government Code is amended to read:

53340.2. (a) The legislative body levying the special tax shall designate an office, department, or bureau of the local agency which shall be responsible for annually preparing the current roll of special tax levy obligations by assessor's parcel number on nonexempt property within the district and which will be responsible for estimating future special tax levies. The designated office, department, or bureau shall establish procedures to promptly respond to inquiries concerning current and future estimated tax liability. Neither the designated office, department, or bureau, nor the legislative body, shall be liable if any estimate of future tax liability is inaccurate, nor for any failure of any seller to request a Notice of Special Tax or to provide the notice to a buyer.

(b) For purposes of enabling sellers of real property subject to the levy of special taxes to satisfy the notice requirements of subdivision (b) of Section 1102.6 of the Civil Code, the designated office, department, or bureau shall furnish a Notice of Special Tax to any individual requesting the notice or any owner of property subject to a special tax levied by the local agency within five working days of receiving a request for such notice. The local agency may charge a

reasonable fee for this service.

(c) (1) The notice shall contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-point type, and shall be in substantially the following form, and although the form may be modified as needed to clearly and accurately describe the tax structure and other characteristics of districts created before January 1, 1993. The notice shall be completed by the designated office, department, or bureau except for the signatures and date of signing:

NOTICE OF SPECIAL TAX

COMMUNITY FACILITIES DISTRICT NO. _____
COUNTY OF _____, CALIFORNIA

TO: THE PROSPECTIVE PURCHASER OF THE REAL PROPERTY KNOWN AS:

_____

_____

THIS IS A NOTIFICATION TO YOU PRIOR TO YOUR PURCHASING THIS PROPERTY.

This property is subject to a special tax, which is in addition to the regular property taxes and any other charges and benefit assessments on the parcel. This special tax may not be imposed on all parcels within the city or county where the property is located. If you fail to pay this tax when due each year, the property may be foreclosed upon and sold. The tax is used to provide public facilities or services that are likely to particularly benefit the property. YOU SHOULD TAKE THIS TAX AND THE BENEFITS FROM THE PUBLIC FACILITIES AND SERVICES FOR WHICH IT PAYS INTO ACCOUNT IN DECIDING WHETHER TO BUY THIS PROPERTY.

(2) The maximum special tax which may be levied against this parcel to pay for public facilities is $_____ during the _____-____ tax year. This amount will increase by ____ percent per year after that (if applicable). The special tax will be levied each year until all of the authorized facilities are built and all special tax bonds are repaid, but in any case not after the _____-____ tax year.

An additional special tax will be used to pay for ongoing services, if applicable. The maximum amount of this tax is _____ dollars ($_____) during the _____-____ tax year. This amount may increase by _____, if applicable, and may be levied until the _____-____ tax year (or forever, as applicable).

(3) The authorized facilities which are being paid for by the special taxes, and by the money received from the sale of bonds which are being repaid by the special taxes, are:

These facilities may not yet have all been constructed or acquired and it is possible that some may never be constructed or acquired.

In addition, the special taxes may be used to pay for costs of the following services:

YOU MAY OBTAIN A COPY OF THE RESOLUTION OF FORMATION WHICH AUTHORIZED CREATION OF THE COMMUNITY FACILITIES DISTRICT, AND WHICH SPECIFIES MORE PRECISELY HOW THE SPECIAL TAX IS APPORTIONED AND HOW THE PROCEEDS OF THE TAX WILL BE USED, FROM THE _____ (name of jurisdiction) BY CALLING _____ (telephone number). THERE MAY BE A CHARGE FOR THIS DOCUMENT NOT TO EXCEED THE ESTIMATED REASONABLE COST OF PROVIDING THE DOCUMENT.

I (WE) ACKNOWLEDGE THAT I (WE) HAVE RECEIVED A COPY OF THIS NOTICE. I (WE) UNDERSTAND THAT I (WE) MAY TERMINATE THE CONTRACT TO PURCHASE OR DEPOSIT RECEIPT AFTER RECEIVING THIS NOTICE FROM THE OWNER OR AGENT SELLING THE PROPERTY. THE CONTRACT MAY BE TERMINATED WITHIN THREE DAYS IF THE NOTICE WAS RECEIVED IN PERSON OR WITHIN FIVE DAYS AFTER IT WAS DEPOSITED IN THE MAIL BY GIVING WRITTEN NOTICE OF THAT TERMINATION TO THE OWNER OR AGENT SELLING THE PROPERTY.

DATE: _____

_____

_____

SEC. 77. Section 53830.5 of the Government Code is amended to read:

53830.5. (a) As to any notes, tax anticipation warrants, or other evidences of indebtedness issued by a school district, county board of education, or community college district pursuant to this article on or after January 1, 1993, the governing board may elect, by the adoption of a resolution by affirmative vote of the number of governing board members required for the adoption of the resolution described in Section 53825, to guarantee payment in accordance with the following:

(1) The governing board making the election authorized by this subdivision shall so notify the Controller. That notice shall include a schedule of payment for the notes, tax anticipation warrants, or other evidences of indebtedness, and shall identify the trustee appointed by the governing board for the purposes of paragraphs (2) and (3). For purposes of this section, "notes, tax anticipation warrants, or other evidences of indebtedness" means any debt with a maximum maturity not exceeding one year from the date of issue and a maturity date that is within the fiscal year of issue.

(2) If, for any reason, the funds otherwise available to the agency for any payment due under the terms of the notes, tax anticipation

warrants, or other evidences of indebtedness will not be sufficient for that purpose at the time payment is required as to any one or more of the notes, tax anticipation warrants, or other evidences of indebtedness, the agency shall so notify the trustee. The trustee immediately shall communicate that information to the affected person or persons holding the notes, tax anticipation warrants, or other evidences of indebtedness, and to the Controller. If the agency is a school district, the trustee also shall communicate that information immediately to the county superintendent of schools.

(3) When the Controller receives from the trustee the notice described in paragraph (2), or the agency fails to make any payment of one or more of the notes, tax anticipation warrants, or other evidences of indebtedness at the time that payment is required, the Controller shall make one or more apportionments to the trustee, subject to paragraph (4), in a total amount equal to the amount of the required payment from moneys appropriated to the State School Fund, and the trustee thereupon shall make that payment. The Controller shall withhold the amount of any payment made under this paragraph, including reimbursement of the Controller's administrative costs as determined under a schedule approved by the California Debt Advisory Commission, from any subsequent apportionment or apportionments to be made to the agency from the State School Fund.

(4) The amount apportioned to a trustee pursuant to paragraph (3) in any month shall not exceed the amount that otherwise would be apportioned to the agency for that month from the State School Fund. This paragraph does not prohibit the Controller from making two or more apportionments to a trustee pursuant to paragraph (3) as necessary to satisfy a required payment in accordance with that paragraph.

(5) The resolution shall state both of the following:

(A) That the agency maintains an overall positive fund equity as of the date of the adoption of the resolution, and that the governing board anticipates that the agency will maintain an overall positive fund equity at the end of the fiscal year in which the notes, tax anticipation warrants, or other evidences of indebtedness are issued. For purposes of this section, "overall positive fund equity" means that the sum of the cash available to the agency and its accounts receivable exceeds the amount of the accounts payable by the agency.

(B) That the governing board of the agency understands, in authorizing the Controller to make the payment described in paragraph (3) and, accordingly, to withhold certain funds that otherwise would be apportioned to the agency, that the nonpayment of salaries or other obligations of the agency may result.

(6) Upon the adoption of a resolution as described in this section by the governing board of a school district, that governing board shall file a copy of the resolution with the appropriate county superintendent of schools at least 20 days prior to the sale of any

notes, tax anticipation warrants, or other evidences of indebtedness authorized pursuant to the resolution. At the request of the school district governing board, the county superintendent of schools may waive or reduce the 20-day requirement described in this paragraph.

(b) This section shall not be construed to obligate the State of California to make any payment to or on behalf of any school district, county board of education, or community college district from the State School Fund in any amount, or pursuant to any particular allocation formula, or to make any other payment to or on behalf of a school district, county board of education, or community college district, including, but not limited to, any payment in satisfaction of any debt or liability incurred or guaranteed by a school district, county board of education, or community college district pursuant to this section or any other provision of this article.

(c) This section shall not be applied so as to impair the obligation of any contract that is in effect as of January 1, 1993, in a manner that would violate either Section 9 of Article I of the California Constitution or Section 10 of Article I of the United States Constitution.

(d) Any apportionment made by the Controller pursuant to paragraph (3) of subdivision (a) shall be deemed to be an allocation to a school district for purposes of subdivision (b) of Section 8 of Article XVI of the California Constitution, and for purposes of Chapter 2 (commencing with Section 41200) of Part 24 of the Education Code.

SEC. 78. Section 65250 of the Government Code is amended to read:

65250. (a) A city with a population in excess of three million may establish a Long Range Planning Trust Fund in accordance with subdivision (b) to consist of those moneys that are voluntarily paid by an assessee of real property on the property tax bill in an amount equal to one dollar ($1) for each parcel of assessed real property of one acre or less, or one dollar ($1) per acre, and any additional fractional portion thereof, for each parcel of assessed real property of more than one acre, and are collected and deposited pursuant to an agreement as described in subdivision (d).

(b) A city as described in subdivision (a) shall establish a Long Range Planning Trust Fund by a resolution, adopted by a majority vote of the city's governing body. That resolution shall require that moneys in the fund shall be expended upon the vote of that city's governing body only for purposes of long-term land use planning and general plan revisions.

(c) Upon adoption of a resolution pursuant to subdivision (b), a city may solicit voluntary contributions as described in subdivision (a), and upon receiving authorization to collect a contribution by an assessee of real property, may transmit to the county assessor, county auditor, and county tax collector any information regarding the assessee that may be necessary to collect the contribution pursuant to an agreement as specified in subdivision (d).

(d) The county assessor, county auditor, county tax collector and the adopting city may enter into a joint agreement for the collection and allocation of voluntary contributions as described in subdivision (a), that may provide for the collection of contributions by the tax collector. The agreement shall provide for the allocation to the county assessor, county auditor, and tax collector from moneys collected of amounts equal to the actual and reasonable costs incurred by those persons in collecting and allocating contributions.

SEC. 79. Section 65583.1 of the Government Code is amended to read:

65583.1. The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for consistency with state law, may allow a local government to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. Nothing in this section reduces a local government's responsibility to identify, by income category, the total number of sites for residential development as required by this article.

SEC. 80. Section 66020 of the Government Code is amended to read:

66020. (a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development of the residential housing development. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed

residential housing development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a residential housing development. Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency within 180 days after the date of the imposition. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) (1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, the court shall direct the local agency to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions to be imposed on a residential housing development takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this section and under that invalid portion of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment

referenced in paragraph (1).

(g) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(h) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

SEC. 81. Section 68560.5 of the Government Code is amended to read:

68560.5. As used in this article:

(a) "Court proceeding" means a civil, criminal, or juvenile proceeding, excluding a small claims proceeding, and a deposition.

(b) "Interpreter" does not include (1) an interpreter qualified under Section 754 of the Evidence Code to interpret for deaf or hard-of-hearing persons, or (2) an interpreter qualified for administrative hearings or noncourt settings under Section 11513.

SEC. 82. Section 6832 of the Harbors and Navigation Code, as added by Chapter 680 of the Statutes of 1991, is amended and renumbered to read:

6832.5. Notwithstanding any other provision of law, the creation of any indebtedness by the Sacramento-Yolo Port District pursuant to this chapter shall require the prior authorization of a five-sevenths majority vote of the members of the port commission.

SEC. 83. Section 372 of the Health and Safety Code is amended to read:

372. This article shall be known, and may be cited, as the Childhood Lead Poisoning Prevention Act of 1991.

SEC. 84. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital that exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and

anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital that, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility that provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility that provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of four to 15 beds that provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician and surgeon as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff that provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility that provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled—nursing" means a facility with a capacity of four to 15 beds that provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician and surgeon as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if

not treated.

(i) (1) "Congregate living health facility" means a residential home with a capacity, except as provided in paragraph (4), of no more than six beds, that provides inpatient care, including the following basic services: medical supervision, 24-hour skilled nursing and supportive care, pharmacy, dietary, social recreational, and at least one type of service specified in paragraph (2). The primary need of congregate living health facility residents shall be for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. This care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities.

(2) Congregate living health facilities shall provide one of the following services:

(A) Services for persons who are mentally alert, physically disabled persons, who may be ventilator dependent.

(B) Services for persons who have a diagnosis of terminal illness, a diagnosis of a life-threatening illness, or both. Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon. A "life-threatening illness" means the individual has an illness that can lead to a possibility of a termination of life within five years or less as stated in writing by his or her attending physician and surgeon.

(C) Services for persons who are catastrophically and severely disabled. A catastrophically and severely disabled person means a person whose origin of disability was acquired through trauma or nondegenerative neurologic illness, for whom it has been determined that active rehabilitation would be beneficial and to whom these services are being provided. Services offered by a congregate living health facility to a catastrophically disabled person shall include, but not be limited to, speech, physical, and occupational therapy.

(3) A congregate living health facility license shall specify which of the types of persons described in paragraph (2) to whom a facility is licensed to provide services.

(4) (A) A facility operated by a city and county for the purposes of delivering services under this section may have a capacity of 59 beds.

(B) A congregate living health facility not operated by a city and county servicing persons who are terminally ill, persons who have been diagnosed with a life-threatening illness, or both, that is located in a county with a population of 500,000 or more persons may have not more than 25 beds for the purpose of serving terminally ill persons.

(C) A congregate living health facility not operated by a city and county serving persons who are catastrophically and severely disabled, as defined in subparagraph (C) of paragraph (2) that is located in a county of 500,000 or more persons may have not more than 12 beds for the purpose of serving catastrophically and severely

disabled persons.

(5) A congregate living health facility shall have a noninstitutional, homelike environment.

(j) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency that, as determined by the state department, provides outpatient health services, in addition to inpatient health services, to that portion of the inmate population that does not require a general acute care level of basic services. This definition shall not apply to those areas of a city, county, or city and county law enforcement facility that houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of security and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician and surgeon, psychiatrist, psychologist, nursing, pharmacy, dental, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the facilities at the California Medical Facility, the California Men's Colony, and the California Institution for Men that were in the process of licensure in 1987.

(6) This subdivision shall remain operative only until January 1, 1994.

(k) "Nursing facility" means a facility that is licensed as either of the following:

(1) Skilled nursing facility.

(2) Intermediate care facility.

(*l*) Regulations defining a correctional treatment center described in subdivision (j) that is operated by a county, city, or city and county, shall not become effective prior to, or if effective, shall become inoperative until January 1, 1994, and until that time correctional facilities are exempt from any licensing requirements.

SEC. 85. Section 1428 of the Health and Safety Code is amended to read:

1428. (a) If the licensee desires to contest a citation or the proposed assessment of a civil penalty therefor, the licensee shall use

the processes described in subdivisions (b) and (c) for classes "AA," "A," or "B" citations. As a result of a citation review conference, a citation or the proposed assessment of a civil penalty may be affirmed, modified, or dismissed by the director or the director's designee. If the director's designee affirms, modifies, or dismisses the citation or proposed assessment of a civil penalty, he or she shall state with particularity in writing his or her reasons for that action, and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within 15 business days after he or she receives the decision by the director's designee.

(b) If a licensee notifies the director that he or she intends to contest a class "AA" or a class "A" citation, the licensee may first within 15 business days after service of the citation notify the director in writing of his or her request for a citation review conference. The licensee shall inform the director in writing, within 15 business days of the service of the citation or the receipt of the decision of the director's designee after the citation review conference, of the licensee's intent to adjudicate the validity of the citation in the municipal or superior court in the county in which the long-term health care facility is located. In order to perfect a judicial appeal of a contested citation, a licensee shall file a civil action in the municipal or superior court in the county in which the long-term health care facility is located. The action shall be filed no later than 60 calendar days after a licensee notifies the director he or she intends to contest the citation, or no later than 90 days after the receipt of the decision by the director's designee after the citation review conference, and served not later than 90 days after filing. Notwithstanding any other provision of law, for those citations issued after January 1, 1993, a licensee prosecuting a judicial appeal shall file and serve an at-issue memorandum pursuant to Rule 209 of the California Rules of Court by July 1, 1993, or within six months after the state department files its answer in the appeal, whichever is later. Notwithstanding subdivision (d), the court shall dismiss the appeal upon motion of the state department if the at-issue memorandum is not filed by the facility within the period specified.

(c) If a licensee desires to contest a class "B" citation, the licensee may request, within 15 business days, a citation review conference, by writing the director or the director's designee of the licensee's intent to appeal the citation through the citation review conference. If the licensee wishes to appeal the citation which has been upheld in a citation review conference, the licensee shall, within 15 working days from the date the citation review conference decision was rendered, notify the director or the director's designee that he or she wishes to appeal the decision through the procedures set forth in subdivision (c) of Section 14123 of the Welfare and Institutions Code. The administrative law judge may affirm, modify, or dismiss the citation or the proposed assessment of a civil penalty. The licensee

may choose to have his or her appeal heard by the administrative law judge without having first appealed the decision to a citation review conference by notifying the director in writing within 15 business days of the service of the citation.

(d) If a licensee is dissatisfied with the decision of the administrative law judge, the licensee may, in lieu of seeking judicial review of the decision as provided in Section 1094.5 of the Code of Civil Procedure, elect to submit the matter to binding arbitration by filing, within 60 days of its receipt of the decision, a request for arbitration with the American Arbitration Association. The parties shall agree upon an arbitrator designated from the American Arbitration Association in accordance with the association's established rules and procedures. The arbitration hearing shall be set within 45 days of the election to arbitrate, but in no event less than 28 days from the date of selection of an arbitrator. The arbitration hearing may be continued up to 15 additional days if necessary at the arbitrator's discretion. Except as otherwise specifically provided in this subdivision, the arbitration hearing shall be conducted in accordance with the American Arbitration Association's established rules and procedures.

(e) If an appeal is prosecuted under this section in accordance with subdivision (c) of Section 14123 of the Welfare and Institutions Code, the state department shall have the burden of establishing by a preponderance of the evidence that (1) the alleged violation did occur, (2) the alleged violation met the criteria for the class of citation alleged, and (3) the assessed penalty was appropriate. The state department shall also have the burden of establishing by a preponderance of the evidence that the assessment of a civil penalty should be upheld. If a licensee fails to notify the director in writing that he or she intends to contest the citation, or the proposed assessment of a civil penalty therefor, or the decision made by the director's designee, after a citation review conference, within the time specified in this subdivision, the decision by the director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review, except that the licensee may seek judicial relief from the time limits specified in this subdivision. If a licensee appeals a contested citation or the assessment of a civil penalty, no civil penalty shall be due and payable unless and until the appeal is terminated in favor of the state department.

(f) The director or the director's designee shall establish an independent unit of trained citation review conference hearing officers within the state department to conduct citation review conferences. Citation review conference hearing officers shall be directly responsible to the deputy director for licensing and certification, and shall not be concurrently employed as supervisors, district administrators, or regional administrators with the licensing and certification division. Specific training shall be provided to members of this unit on conducting an informal conference, with

emphasis on the regulatory and legal aspects of long-term health care.

Where the state department issues a citation as a result of a complaint or regular inspection visit, and a resident or residents are specifically identified in a citation by name as being specifically affected by the violation, then the following persons may attend the citation review conference:

(1) The complainant and his or her designated representative.

(2) A personal health care provider, designated by the resident.

(3) A personal attorney, only if the long-term health care facility has an attorney present.

(4) Any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code.

Where the state department determines that residents in the facility were threatened by the cited violation but does not name specific residents, any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code, and a representative of the residents or family council at the facility may participate to represent all residents. In this case, these representatives shall be the sole participants for the residents in the conference. The residents' council shall designate which representative will participate.

The complainant, affected resident, or their designated representatives shall be notified by the state department of the conference and their right to participate. The director's designee shall notify the complainant or his or her designated representative and the affected resident or his or her designated representative, of his or her determination based on the citation review conference.

(g) In assessing the civil penalty for a violation, all relevant facts shall be considered, including, but not limited to, all of the following:

(1) The probability and severity of the risk which the violation presents to the patient's or resident's mental and physical condition.

(2) The patient's or resident's medical condition.

(3) The patient's or resident's mental condition and his or her history of mental disability.

(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

(h) Except as otherwise provided in this subdivision, an assessment of civil penalties for a class "A" or class "B" violation shall be trebled and collected for a second or subsequent violation of the same class within any 12-month period. Trebling shall occur only if the first citation issued within the 12-month period was issued in the same class, a civil penalty was assessed, and a plan of correction was submitted for the previous same-class violation occurring within the period, without regard to whether the action to enforce the previous citation has become final. However, the increment to the civil

penalty required by this subdivision shall not be due and payable unless and until the previous action has terminated in favor of the state department.

If the class "B" citation is issued for a patient's rights violation, as defined in subdivision (d) of Section 1424, it shall not be trebled unless the state department determines the violation has a direct or immediate relationship to the health, safety, security, or welfare of long-term health care facility residents.

(i) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to safety or health.

(j) Actions brought under this chapter shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. Times for responsive pleading and for hearing the proceeding shall be set by the judge of the court with the object of securing a decision as to subject matters at the earliest possible time.

(k) If the citation is dismissed, the state department shall take action immediately to ensure that the public records reflect in a prominent manner that the citation was dismissed.

(*l*) Penalties paid on violations under this chapter shall be applied against the state department's accounts to offset any costs incurred by the state pursuant to this chapter. Any costs or penalties assessed pursuant to this chapter shall be paid within 30 days of the date the decision becomes final. If a facility does not comply with this requirement, the state department shall withhold any payment under the Medi-Cal program until the debt is satisfied. No payment shall be withheld if the state department determines that it would cause undue hardship to the facility or to patients or residents of the facility.

(m) The amendments made to subdivisions (a) and (c) of this section by Chapter 84 of the Statutes of 1988, to extend the number of days allowed for the provision of notification to the director, do not affect the right, which is also contained in those amendments, to request judicial relief from these time limits.

SEC. 86. Section 1569.692 of the Health and Safety Code is amended to read:

1569.692. (a) Notwithstanding paragraph (6) of subdivision (a) of Section 87572 of Title 22 of the California Code of Regulations, participating residential care facilities for the elderly may operate with a secured or locked perimeter if all of the following conditions are met:

(1) The resident is never locked in his or her room.

(2) With respect to residential care facility for the elderly sites, the resident is never physically or chemically restrained. For purposes of this section "chemically restrained" does not include medication prescribed by a physician and surgeon which is an essential component of the resident's treatment plan and which is

generally recognized by the Alzheimer's disease diagnostic and treatment centers established pursuant to Section 413 as appropriate treatment for a person with a medical diagnosis of dementia.

(3) With respect to residential care facility for the elderly sites, the resident has freedom of movement within the secured perimeter.

(4) Evidence shall be provided in the resident's file that a formal mental status questionnaire has been administered to rule out mental illness and to determine cognitive level.

(5) Evidence shall be provided in the resident's file that the following diagnostic tests have been given, as appropriate, to rule out reversible disease:

(A) At least one type of brain imaging test.

(B) A complete blood count.

(C) Serum glucose.

(D) Serum urea nitrogen.

(E) Creatinine level.

(F) Thyroid function.

(G) Seriology test for syphilis.

(H) Determination of B-12 and Folate levels.

(I) Urinalysis.

(J) Other tests indicated by medical history or physician and surgeon.

The department, in consultation with the Alzheimer's disease diagnostic and treatment centers, established pursuant to Section 413, may require other tests or change the tests required in this paragraph to reflect advances in diagnostic technology.

(b) For purposes of this section, "secured perimeter" means that the external boundary of the facility, including yard areas, are functionally locked to the resident. If a facility provides multiple levels of care or has separate and distinct sections to the physical layout, each level or section licensed by the department may be secured. The purpose of the secured perimeter is to provide free movement in a safe area to residents within the boundaries of the facility, including yard areas, to prevent wandering.

SEC. 87. Section 1569.73 of the Health and Safety Code is amended to read:

1569.73. (a) Notwithstanding Section 1569.72 or any other provision of law, a residential care facility for the elderly may obtain a waiver from the department for the purpose of allowing a resident who has been diagnosed as terminally ill by his or her physician or surgeon to remain in the facility when all the following conditions are met:

(1) The facility agrees to retain the terminally ill resident and to seek a waiver on behalf of the individual, provided the individual has requested the waiver and is capable of deciding to obtain hospice services.

(2) The terminally ill resident has obtained the services of a licensed hospice. "Hospice" for the purposes of this section has the

same meaning as set forth in subdivision (a) of Section 1339.31.

(3) The facility, in the judgment of the department, has the ability to provide care and supervision appropriate to meet the needs of the terminally ill resident, and is in substantial compliance with regulations governing the operation of residential care facilities for the elderly.

(4) The resident has resided in the facility for a period of at least six months prior to a physician's authorization for hospice services.

(5) The hospice has agreed to design and provide for care, services, and necessary medical intervention related to the terminal illness as necessary to supplement the care and supervision provided by the facility.

(6) An agreement has been executed between the facility and the hospice regarding the care plan for the resident. The care plan shall designate the primary caregiver, identify other caregivers, and outline the tasks the facility is responsible for performing and the approximate frequency with which they shall be performed. The care plan shall specifically limit the facility's role for care and supervision to those tasks allowed under this chapter.

(7) The facility has obtained the agreement of those residents who share the same room with the terminally ill resident to allow the hospice caregivers into their residence.

(b) At any time that the licensed hospice, the facility, or the terminally ill resident determines that the resident's condition has changed so that continued residence in the facility will pose a threat to the health and safety to the terminally ill resident or any other resident, the facility may initiate procedures for a transfer.

(c) Nothing in this section is intended to expand the scope of care and supervision for a residential care facility for the elderly as defined in this act, nor shall a facility be required to alter or extend its license in order to retain a terminally ill resident as authorized by this section.

(d) Nothing in this section shall require any care or supervision to be provided by the residential care facility for the elderly beyond that which is permitted in this chapter.

(e) Nothing in this section is intended to expand the scope of life care contracts or the contractual obligation of continuing care retirement communities as defined in Section 1771.

(f) The department shall not be responsible for the evaluation of medical services provided to the resident by the hospice and shall have no liability for the independent acts of the hospice.

(g) Nothing in this section shall be construed to relieve a licensed residential care facility for the elderly of its responsibility to notify the appropriate fire authority of the presence of a bedridden resident in the facility as required under subdivision (e) of Section 1569.72, and to obtain and maintain a fire clearance as required under Section 1569.149.

SEC. 88. Section 11100 of the Health and Safety Code is amended to read:

11100. (a) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to any person in this state shall submit a report to the Department of Justice of all of those transactions:

(1) Phenyl-2-propanone.
(2) Methylamine.
(3) Ethylamine.
(4) D-lysergic acid.
(5) Ergotamine tartrate.
(6) Diethyl malonate.
(7) Malonic acid.
(8) Ethyl malonate.
(9) Barbituric acid.
(10) Piperidine.
(11) N-acetylanthranilic acid.
(12) Pyrrolidine.
(13) Phenylacetic acid.
(14) Anthranilic acid.
(15) Morpholine.
(16) Ephedrine.
(17) Pseudoephedrine.
(18) Norpseudoephedrine.
(19) Phenylpropanolamine.
(20) Propionic anhydride.
(21) Isosafrole.
(22) Safrole.
(23) Piperonal.
(24) Thionylchloride.
(25) Benzyl cyanide.
(26) Ergonovine maleate.
(27) N-methylephedrine.
(28) N-ethylephedrine.
(29) N-methylpseudoephedrine.
(30) N-ethylpseudoephedrine.
(31) Chloroephedrine.
(32) Chloropseudoephedrine.
(33) Hydriodic acid.
(34) Any of the substances listed by the Department of Justice in regulations promulgated pursuant to subdivision (b).

(b) The Department of Justice may adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year following the calendar year during which the regulation was adopted.

(c) (1) Any manufacturer, wholesaler, retailer, or other person shall, prior to selling, transferring, or otherwise furnishing any

substance specified in subdivision (a) to a person in this state, require proper identification from the purchaser.

(2) For the purposes of this subdivision, "proper identification" means a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser which contains a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number, the motor vehicle license number of the motor vehicle used by the purchaser at the time of purchase, a letter of authorization from the business for which any substance specified in subdivision (a) is being furnished, which includes the business license number and address of the business, a full description of how the substance is to be used, and the signature of the purchaser. The person selling, transferring, or otherwise furnishing any substance specified in subdivision (a) shall affix his or her signature as a witness to the signature and identification of the purchaser.

(3) A violation of this subdivision is a misdemeanor.

(d) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person in this state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision (c), to the Department of Justice. However, the Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the same substance if the Department of Justice determines that either of the following exists:

(1) A pattern of regular supply of the substance exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance and the recipient of the substance.

(2) The recipient has established a record of utilization of the substance for lawful purposes.

(e) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer or wholesaler licensed by the California State Board of Pharmacy who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian.

(4) Any sale, transfer, furnishing, or receipt of any drug which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder. Preparations in solid dosage form

containing ephedrine as the only active medicinal ingredient are not exempt from this section.

(f) (1) Any person specified in subdivision (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment.

(2) Any person specified in subdivision (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both the fine and imprisonment.

(g) (1) It is unlawful for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

(2) It is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

(3) A violation of this subdivision is a misdemeanor.

SEC. 89. Section 11370.9 of the Health and Safety Code is amended to read:

11370.9. (a) It is unlawful for any person knowingly to receive or acquire proceeds, or engage in a transaction involving proceeds, known to be derived from any violation of this division or Division 10.1 with the intent to conceal or disguise or aid in concealing or disguising the nature, location, ownership, control, or source of the proceeds or to avoid a transaction reporting requirement under state or federal law.

(b) It is unlawful for any person knowingly to give, sell, transfer, trade, invest, conceal, transport, or maintain an interest in, or otherwise make available, anything of value which that person knows is intended to be used for the purpose of committing, or furthering the commission of, any violation of this division or Division 10.1 with the intent to conceal or disguise or aid in concealing or disguising the nature, location, ownership, control, or source of the proceeds or to avoid a transaction reporting requirement under state or federal law.

(c) It is unlawful for any person knowingly to direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known to be derived from any violation of this division or Division 10.1 with the intent to conceal or disguise or aid in concealing or disguising the nature, location, ownership, control, or source of the proceeds or to avoid a transaction reporting requirement under state or federal law.

(d) It is unlawful for any person knowingly to conduct a transaction involving proceeds derived from a violation of this division or Division 10.1 when the transaction is designed in whole or in part to conceal or disguise the nature, location, source,

ownership, or control of the proceeds known to be derived from a violation of this division or Division 10.1 with the intent to conceal or disguise or aid in concealing or disguising the nature, location, ownership, control, or source of the proceeds or to avoid a transaction reporting requirement under state or federal law.

(e) A violation of this section shall be punished by imprisonment in a county jail for not more than one year or in the state prison for a period of two, three, or four years, by a fine of not more than two hundred fifty thousand dollars ($250,000) or twice the value of the proceeds or property involved in the violation, whichever is greater, or by both that imprisonment and fine. Notwithstanding any other provision of law, each violation of this section shall constitute a separate, punishable offense without limitation.

(f) This section shall apply only to a transaction, or series of related transactions within a 30-day period, involving over twenty-five thousand dollars ($25,000) or to proceeds of a value exceeding twenty-five thousand dollars ($25,000).

(g) In consideration of the constitutional right to counsel afforded by the Sixth Amendment to the United States Constitution and Section 15 of Article 1 of the California Constitution, this section is not intended to apply to the receipt of, or a related transaction involving, a fee by an attorney for the purpose of providing advice or representing a person in a criminal investigation or prosecution.

(h) For the purposes of this section, the following terms have the following meanings:

(1) "Proceeds" means property acquired or derived directly or indirectly from, produced through, or realized through any violation of this division or Division 10.1.

(2) "Transaction" includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, electronic, magnetic, or manual transfer between accounts, exchange of currency, extension of credit, purchase or sale of any monetary instrument, or any other acquisition or disposition of property by whatever means effected.

(3) "Represented by a law enforcement officer" means any representation of fact made by a peace officer as defined in Section 7 of the Penal Code, or a federal officer described in subsection (e) of Sections 1956 and 1957 of Title 18 of the United States Code, or by another person at the direction of, or with the approval of, that peace officer or federal officer.

SEC. 90. Section 11650 of the Health and Safety Code is amended to read:

11650. (a) Prosecution for any violation of law occurring prior to the effective date of this division is not affected or abated by this division. If the offense being prosecuted is similar to one set out in Chapter 6 (commencing with Section 11350) of this division, then the penalties under Chapter 6 (commencing with Section 11350) apply if they are less than those under prior law.

(b) Civil seizures or forfeitures and injunctive proceedings

commenced prior to effective date of this division are not affected by this division.

(c) All administrative proceedings pending under prior laws which are superseded by this division shall be continued and brought to a final determination in accord with the laws and rules in effect prior to the effective date of this division. Any substance controlled under prior law which is not listed within Schedules I through V, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) This division applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur on or after the effective date of this division.

SEC. 91. Section 11837 of the Health and Safety Code is amended to read:

11837. (a) Pursuant to the provisions of law relating to suspension of a person's privilege to operate a motor vehicle upon conviction for driving while under the influence of an alcoholic beverage or under the combined influence of an alcoholic beverage and any drug, as set forth in paragraph (3) or (4) of subdivision (a) of Section 13352 of the Vehicle Code, the Department of Motor Vehicles shall restrict the driving privilege pursuant to Section 13352.5 of the Vehicle Code, if the court has notified the department pursuant to Section 13352.5 of the Vehicle Code that the person convicted of that offense has consented to participate for at least 18 months in a program designed to offer alcohol services to problem drinkers that is licensed pursuant to this chapter.

(b) In determining whether to refer a person, who is ordered to participate in a program pursuant to Section 668 of the Harbors and Navigation Code, in a licensed alcohol or drug education and counseling services program pursuant to Section 23161 of the Vehicle Code, or, pursuant to Section 23166, 23171, 23176, 23181, 23186, or 23191 of the Vehicle Code, in a licensed 18-month or 30-month program, the court may consider any relevant information about the person made available pursuant to a presentence investigation, which is permitted but not required under Section 23205 of the Vehicle Code, or other screening procedure. That information shall not be furnished, however, by any person who also provides services in a privately operated, licensed program or who has any direct interest in a privately operated, licensed program. In addition, the court shall obtain from the Department of Motor Vehicles a copy of the person's driving record to determine whether the person is eligible to participate in a licensed 18-month or 30-month program pursuant to this chapter.

(c) The court may, as a condition of probation, refer a first offender to a licensed program pursuant to Section 23161 or 23181 of the Vehicle Code to attend all of the education, group counseling, and interview sessions described in Sections 9834, 9836, and 9838 of Title 9 of the California Code of Regulations if ordered to participate

in six, nine, or 12 months of program activities. Notwithstanding Section 13352.5 of the Vehicle Code, if a first offender is referred to a licensed program pursuant to Section 23161 or 23181 of the Vehicle Code, that person may participate in a program if convicted of another offense punishable under Section 23165 or 23185 of the Vehicle Code.

(d) The court may, subject to Sections 11837.2 and 11837.3 and as a condition of probation, refer a person to a licensed program, even though the person's privilege to operate a motor vehicle is restricted, suspended, or revoked. An 18-month program described in Section 23166 or 23186 of the Vehicle Code or a 30-month program described in Section 23171, 23176, or 23191 of the Vehicle Code may include treatment of family members and significant other persons related to the convicted person with the consent of those family members and others as described in subdivision (e) of Section 9838 of Title 9 of the California Administrative Code, if there is no increase in the costs of the program to the convicted person.

(e) As used in this chapter, except as provided in subdivision (b) for violations of Section 668 of the Harbors and Navigation Code, "program" means a program which has been recommended by the county board of supervisors to the department and possesses a valid license issued by the department.

SEC. 92. Section 11838.4 of the Health and Safety Code is amended to read:

11838.4. (a) Notwithstanding any other provision of this chapter, any person who violates Section 11836.10 may be assessed by the department an immediate civil penalty in the amount of two hundred dollars ($200) per day of the violation. The civil penalty shall be imposed if an unlicensed program is operated and the operator refuses to seek licensure or the operator's licensure application is denied and the operator continues to operate the unlicensed program.

(b) In addition to suspension or revocation of a license issued under this chapter, the department may levy a civil penalty against any program provider who is not in compliance with statutes and regulations.

(1) The amount of the civil penalty shall not be less than twenty-five dollars ($25) or more than fifty dollars ($50) per day for each violation of this chapter except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment, or both, as determined by the department. In no event, shall the civil penalty assessment for noncompliance exceed one hundred fifty dollars ($150) per day, or a total of five thousand dollars ($5,000).

(2) Prior to the assessment of any civil penalty other than a civil penalty specified in paragraph (1) or (3), the program provider shall have a minimum of 30 days to correct the deficiency.

(3) Any program provider that is cited for repeating the same violation of this chapter within a 12-month period is subject to an

immediate civil penalty of one hundred fifty dollars ($150) and fifty dollars ($50) for each day the violation continues until the deficiency is corrected. In no event shall the total fine exceed five thousand dollars ($5,000).

(4) The suspension, revocation, forfeiture, or surrender of a license issued by the department shall not deprive the department of its authority to institute or continue a disciplinary proceeding against a licensee upon any grounds provided for in law or to enter and order suspending or revoking the license or otherwise taking disciplinary action against the licensee.

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

SEC. 93. Section 15076 of the Health and Safety Code is amended to read:

15076. Subject to the complete exemption contained in paragraphs (8) of subdivision (b) of Section 15026, and notwithstanding any other provision of law, plans for the construction or alteration of any hospital building, as defined in Section 1250, or any building specified in Section 15071, that are prepared by or under the supervision of the Department of Corrections or on behalf of the Department of the Youth Authority shall not require the review and approval of the statewide office. In lieu of review and approval by the statewide office, the Department of Corrections and the Department of the Youth Authority shall certify to the statewide office that their plans and construction are in full conformance with all applicable building standards, including, but not limited to, fire and life and safety standards, and the requirements of this chapter for the architectural, structural, mechanical, plumbing, and electrical systems. The Department of Corrections and the Department of the Youth Authority shall use a secondary peer review procedure to review designs to ensure the adherence to all design standards for all new construction projects, and shall ensure that the construction is inspected by a competent, onsite inspector to ensure the construction is in compliance with the design and plan specification.

Subject to the complete exemption contained in paragraphs (8) and (9) of subdivision (b) of Section 15026, and notwithstanding any other provision of law, plans for the construction or alteration of any correctional treatment center that are prepared by or under the supervision of a law enforcement agency of a county or city and county shall not require the review and approval of the statewide office. In lieu of review and approval by the statewide office, the law enforcement agency of a county or city and county shall certify to the statewide office that the plans and construction are in full conformance with all applicable building standards, including, but not limited to, fire and life and safety standards, and the

requirements of this chapter for the architectural, structural, mechanical, plumbing, and electrical systems.

It is the intent of the Legislature that, except as specified in this section, all hospital buildings as defined by this chapter constructed by or under the supervision of the Department of Corrections or local law enforcement agencies, or constructed on behalf of the Department of the Youth Authority shall at a minimum meet all applicable regulations adopted pursuant to this chapter and all other applicable state laws.

SEC. 94. Section 17033 of the Health and Safety Code is amended to read:

17033. Section 17032 shall not apply to employee housing owned or operated by railroad corporations. Application for a permit to operate employee housing owned or operated by a railroad corporation shall be made to the Department of Housing and Community Development within 30 days of initial occupancy and shall contain at least the following information:

(a) The name and address and telephone numbers of the employee housing owner and operator.

(b) The present location of the employee housing.

(c) The present approximate number of occupants to be housed.

(d) A description of the present facilities comprising the employee housing.

(e) Approximate dates of present occupancy. An amended permit shall not be required if there is any change in the foregoing information applicable to the railroad employee housing, provided, however, the railroad corporation shall make this information available to the department upon reasonable request.

SEC. 95. Section 17060 of the Health and Safety Code is amended to read:

17060. (a) Any employee housing which does not conform to this part, building standards published in the State Building Standards Code relating to employee housing, the other regulations adopted pursuant to this part, or conditions of the permit, is a public nuisance and, if not made to conform within five days or within a longer period of time, not to exceed 30 days, which may be allowed by the enforcement agency after written notice, shall be abated by proper action brought in the superior court of the county in which the employee housing or greater portion thereof is situated. Where inspection verifies that the owner or operator of employee housing is proceeding with reasonable diligence, or where conditions beyond the control of the owner or operator prevent conformance, the enforcement agency may grant time extensions not to exceed 30 days in duration. No more than two of these extensions shall be allowed by the enforcement agency prior to initiation of action to abate the public nuisance.

(b) Any violation of this part, building standards published in the State Building Standards Code relating to employee housing, the other regulations adopted pursuant to this part, or the provisions of

the permit which constitute an immediate or material hazard to the health or safety of the occupants of employee housing, shall be remedied within five days after written notice by the enforcement agency, or shorter time in case of emergency. In the event of failure to comply with this section, the Attorney General, or the attorney for the enforcement agency, shall, by verified complaint setting forth the facts, apply to the superior court for an order granting the relief for which the action or proceeding is brought until the entry of a final judgment or order.

(c) The superior court may make any order for which application is made pursuant to this section.

(d) In any action or proceeding brought pursuant to this part, service of summons is sufficient if served in the manner provided in the Code of Civil Procedure.

(e) (1) Any enforcement agency which institutes an action or proceeding pursuant to this section shall, at the time of filing the action or proceeding, record in the office of the recorder of the county or counties in which the property affected by the action or proceeding is situated, a notice of the pendency of the action or proceeding.

(2) The enforcement agency may charge the property owner for any costs involved in recording the notice and shall reimburse the owner for any amount charged if the action or proceeding is dismissed or if judgment is rendered for the property owner.

(f) The notice recorded pursuant to subdivision (e) shall be withdrawn by the enforcement agency by recording in the office of the county recorder, in the county or counties in which the notice was recorded, a notice of withdrawal within five days following satisfaction of a court order or other resolution of the action or proceeding.

(g) In any action or proceeding brought pursuant to this part, it is not necessary for the complainant to provide or file any undertaking or bond for the issuance of any preliminary or permanent injunction. In addition, it is not necessary for a complainant to allege or prove actual damages or the threat thereof, or actual injury or the threat thereof, to the plaintiff, so long as a violation of this part is alleged and proven.

SEC. 96. Section 18420 of the Health and Safety Code is amended to read:

18420. (a) (1) If, upon inspection, the enforcement agency determines that a mobilehome park is in violation of any provision of this part, or any rule or regulation adopted pursuant thereto, the enforcement agency shall promptly, but not later than 10 days, excluding Saturday, Sunday, and holidays, after the enforcement agency completes the inspection and determines that the alleged violation exists, issue a notice to correct the violation to the owner or operator of the mobilehome park and to the responsible person, as defined in Section 18603.

(2) In the event of a violation that constitutes an imminent threat

to health and safety, the notice of violation shall be issued immediately and served on the owner or operator of the mobilehome park and to the responsible person, as defined in Section 18603.

(3) The owner or operator of the mobilehome park shall be responsible for the correction of any violations for which a notice of violation has been given pursuant to this subdivision.

(b) (1) If, upon inspection, the enforcement agency determines that a manufactured home, mobilehome, an accessory building or structure, or lot is in violation of any provision of Chapter 4 (commencing with Section 18500), Chapter 5 (commencing with Section 18601), Chapter 6 (commencing with Section 18690), or any rule or regulation adopted pursuant thereto, the enforcement agency shall promptly, but not later than 10 days, excluding Saturday, Sunday, and holidays, after the enforcement agency completes the inspection and determines that the alleged violation exists, issue a notice to correct the violation to the registered owner of the manufactured home or mobilehome, with a copy to the occupant thereof, if different from the registered owner, to the owner or operator of the mobilehome park, and to the responsible person, as defined in Section 18603.

(2) In the event of a violation that constitutes an imminent threat to health and safety, the notice of violation shall be issued immediately and served upon the occupant, with a copy mailed to the registered owner of the manufactured home or mobilehome, if different from the occupant, to the owner or operator of the mobilehome park, and to the responsible person, as defined in Section 18603.

(3) The registered owner of the manufactured home or mobilehome shall be responsible for the correction of any violations for which a notice of violation has been given pursuant to this subdivision.

(4) The enforcement agency may issue a notice of violation in accordance with this chapter to the owner of a recreational vehicle, or of factory-built housing, which occupies a lot within a mobilehome park.

(c) Service of the notice of violation shall be effected either personally or by first-class mail. Each notice of violation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the statutory provisions or regulation alleged to have been violated, as well as any penalty provided by law for failure to make timely correction. The notice of violation shall fix the earliest feasible time, as determined by the enforcement agency, for the elimination of the condition constituting the alleged violation.

(d) Notwithstanding any other provision of law, the enforcement agency may, at its sole discretion, determine not to issue a notice of violation pursuant to this chapter if the condition which violates this part or the regulations adopted pursuant thereto does not constitute

a danger to life, limb, health, or safety. If the enforcement agency determines, pursuant to this subdivision, not to issue a notice of violation, the enforcement agency shall include in its inspection report a description of the condition which violates this part and its determination not to issue a notice of violation.

SEC. 97. Section 18421 of the Health and Safety Code is amended to read:

18421. If the owner or operator of the mobilehome park or the registered owner of the manufactured home or mobilehome disputes a determination by the enforcement agency regarding the alleged violation, the alleged failure to correct the violation in the required timeframe, or the reasonableness of the deadline for correction specified by the notice of violation, the owner or operator of the mobilehome park or the registered owner of the manufactured home or mobilehome may request an informal conference with the enforcement agency. The informal conference, and any subsequent hearings or appeals of the decision of the enforcement agency, shall be conducted in accordance with procedures prescribed by the department.

SEC. 98. Section 19870 of the Health and Safety Code is amended to read:

19870. (a) As a result of construction inspection, an enforcement agency shall not impose a new or modified building requirement different from those specified in the plans and specifications approved during plan checking functions for which a building permit is issued, unless any of the following apply:

(1) The requirement is necessary to correct a violation of the governing code or standard and to protect the public health or safety.

(2) The plans and specifications did not reference the requirement or were not in sufficient detail.

(3) There is a deviation, addition, or deletion from the plan.

(4) There are modifications to the plan by the permittee.

(5) The permit is deemed expired because the building or work authorized by the permit is not commenced within 180 days from the date of the permit, or the permittee has suspended or abandoned the work authorized by the permit at any time after the work is commenced.

(6) The permit is deemed suspended or revoked pursuant to subdivision (e) of Section 303 of the 1991 Edition of the Uniform Building Code of the International Conference of Building Officials.

(b) As used in this chapter:

(1) "Building requirement" means a building standard as defined in Section 18909, or other standard adopted by a local agency pursuant to Section 17958 or subdivision (c) of Section 18941.5, that was effective on the date of the application for the building permit.

(2) "Enforcement agency" means any department of a local agency that has the authority to inspect a construction or renovation project and enforce health, safety, or building codes including, but not limited to, the building department or building division, the fire

department or fire district, and the health department.

(3) "Local agency" means a city, county, or city and county.

(4) "Plans and specifications" mean the plans, drawings, and specifications for a construction or renovation project, for which a building permit was issued, which relates to buildings classified for occupancy as a building of Group A, B, and R-1, pursuant to the 1991, Edition of the Uniform Building Code of the International Conference of Building Officials.

(5) "Building inspector" means any employee of an enforcement agency who performs inspections of a construction or renovation project for the purpose of assuring compliance with adopted uniform building codes and standards.

(6) "Supervisor" means any employee of any enforcement agency to whom a building inspector reports and who is responsible for reviewing a building inspector's project approvals or denials or modification orders.

(c) (1) If an enforcement agency requires that a new or modified building requirement be met pursuant to the condition set forth in paragraph (1) of subdivision (a), the building inspector, within 48 hours of ordering the requirement shall provide the permittee, in writing on a form prescribed by the enforcement agency, a description of the specific threat to public health and safety and the section of the applicable building code or standard that has been violated or not complied with, and the interpretations and reasons for differing from the approved plans and specifications.

(2) If an enforcement agency requires that a new or modified building requirement be met pursuant to the condition set forth in paragraph (2) of subdivision (a), the building inspector, within 48 hours of ordering the requirement, shall provide the permittee, in writing on a form prescribed by the enforcement agency, the applicable building code or standard that has been violated or not complied with, and a description of how that requirement is applicable and necessary to the construction or renovation project for which the building permit is issued.

(3) If an enforcement agency requires that a new or modified building requirement be met pursuant to the condition set forth in paragraph (3) or (4) of subdivision (a), the building inspector, within 48 hours of ordering the requirement, shall provide the permittee, in writing on a form prescribed by the enforcement agency, the applicable building code or standard that has been violated or not complied with, and the deviations, additions, or deletions from, or the modifications to, the plan, as the case may be, which results in a violation or noncompliance with an applicable building code or standard.

(d) If an enforcement agency requires a new or modified building requirement that results in a cumulative increase in the overall cost of the construction or renovation project of 10 percent or more, all findings made by a building inspector pursuant to subdivision (c) shall be reviewed and approved in writing by the supervisor of the

construction inspector within five working days of the order for a new or modified building requirement. No certificate of occupancy may be denied if the findings of a construction supervisor are not so approved.

(e) A copy of all findings made by the building inspector pursuant to subdivision (c) shall be sent to the department within the local agency that is responsible for reviewing and approving the plans and specifications during the plan checking functions for which the building permit is issued.

(f) Compliance with subdivisions (c) and (d) shall not be required if, at the time an enforcement agency imposes a new or modified building requirement, the building inspector, the building inspector's supervisor, and the permittee consult with one another within 48 hours of imposing the requirement, and the permittee agrees with the enforcement agency's order.

SEC. 99. Section 25163 of the Health and Safety Code, as amended by Section 1 of Chapter 1346 of the Statutes of 1992, is amended to read:

25163. (a) (1) Except as otherwise provided in subdivisions (b), (c), (f), and (g), it is unlawful for any person to carry on, or engage in, the transportation of hazardous wastes, unless the person holds a valid registration issued by the department, and it shall be unlawful for any person to transfer custody of a hazardous waste to a transporter who does not hold a valid registration issued by the department. A person who holds a valid registration issued by the department pursuant to this section is a registered hazardous waste transporter, for purposes of this chapter. Any registration issued by the department to a transporter of hazardous waste is not transferable from the person to whom it was issued to any other person.

(2) Any person who transports hazardous waste in a vehicle shall have a valid registration issued by the department in his or her possession while transporting the hazardous waste. The registration certificate shall be shown upon demand to any representative of the department, officer of the Department of the California Highway Patrol, any local health officer, or any public officer designated by the department. Any person registered pursuant to this section may obtain additional copies of the registration from the department upon the payment of a fee of two dollars ($2) for each copy requested, in accordance with Section 12196 of the Government Code.

(3) Commencing January 1, 1986, the hazardous waste information required and collected for registration pursuant to this subdivision shall be recorded and maintained in the management information system operated by the Department of the California Highway Patrol.

(b) Persons transporting only septic tank, cesspool, seepage pit, or chemical toilet waste that does not contain a hazardous waste originating from other than the body of a human or animal and who

hold an unrevoked registration issued by the health officer or the health officer's authorized representative pursuant to Chapter 6 (commencing with Section 25000) are exempt from the requirements of subdivision (a).

(c) Persons transporting hazardous wastes to a permitted hazardous waste facility for transfer, treatment, recycling, or disposal, which wastes do not exceed a total volume of five gallons or do not exceed a total weight of 50 pounds, are exempt from the requirements of subdivisions (a) and (e) and from the requirements of Section 25160 concerning possession of the manifest while transporting hazardous waste, upon meeting all of the following conditions:

(1) The hazardous wastes are transported in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during the transporting.

(2) Different hazardous waste materials are not mixed within a container during the transporting.

(3) If the hazardous waste is extremely hazardous waste or acutely hazardous waste, the extremely hazardous waste or acutely hazardous waste was not generated in the course of any business, and is not more than 2.2 pounds.

(4) The person transporting the hazardous waste is the producer of that hazardous waste, and the person produces not more than 100 kilograms of hazardous waste in any month.

(5) The person transporting the hazardous waste does not accumulate more than a total of 1,000 kilograms of hazardous waste onsite at any one time.

(d) Any person registered as a hazardous waste transporter pursuant to subdivision (a) is not subject to the registration requirements of Chapter 6 (commencing with Section 25000), but shall comply with those terms, conditions, orders, and directions that the health officer or the health officer's authorized representative may determine to be necessary for the protection of human health and comfort, and shall otherwise comply with the requirements for statements as provided in Section 25007. Violations of those requirements of Section 25007 shall be punished as provided in Section 25010. Proof of registration pursuant to subdivision (a) shall be submitted by mail or in person to the local health officer in the city or county in which the registered hazardous waste transporter will be conducting the activities described in Section 25001.

(e) It is unlawful for any person to transport hazardous waste in any truck, trailer, semitrailer, vacuum tank, or cargo tank not inspected by the Department of the California Highway Patrol or to transport hazardous waste in any container, other than a container packaged pursuant to United States Department of Transportation regulations, which has not been inspected by the Department of the California Highway Patrol, or in a rolloff bin which has not been inspected, certified, and maintained in compliance with subdivisions (b) and (c) of Section 25169.1.

(f) Any person authorized to collect solid waste, as defined in Section 40191 of the Public Resources Code, who unknowingly transports hazardous waste to a solid waste facility, as defined in Section 40194 of the Public Resources Code, incidental to the collection of solid waste is not subject to the provisions of subdivisions (a) and (e).

(g) (1) Any person who transports latex paint, antifreeze, or small batteries pursuant to paragraph (4) of subdivision (c) of Section 25201, spent lead-acid batteries, or used oil to an authorized household hazardous waste collection facility for recycling shall not be required to have a manifest in his or her possession pursuant to paragraph (1) of subdivision (d) of Section 25160 while transporting that waste if the total amount transported in a single vehicle at one time does not exceed any of the following:

(A) A combined volume or weight of 10 gallons or 100 pounds of latex paint, antifreeze, and small batteries.

(B) Two spent lead-acid batteries.

(C) Twenty gallons of used oil, if the requirements of subparagraphs (A) and (B) of paragraph (5) of subdivision (c) of Section 25201 are met.

(2) This subdivision does not apply if any hazardous wastes or household hazardous wastes, other than latex paint, antifreeze, small batteries, spent lead-acid batteries, or used oil, are transported at the same time in the same vehicle.

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

SEC. 100. Section 25163 of the Health and Safety Code, as amended by Section 2 of Chapter 1346 of the Statutes of 1992, is amended to read:

25163. (a) (1) Except as otherwise provided in subdivisions (b), (c), (f), and (g), it is unlawful for any person to carry on, or engage in, the transportation of hazardous wastes, unless the person holds a valid registration issued by the department, and it shall be unlawful for any person to transfer custody of a hazardous waste to a transporter who does not hold a valid registration issued by the department. A person who holds a valid registration issued by the department pursuant to this section is a registered hazardous waste transporter, for purposes of this chapter. Any registration issued by the department to a transporter of hazardous waste is not transferable from the person to whom it was issued to any other person.

(2) Any person who transports hazardous waste in a vehicle shall have a valid registration issued by the department in his or her possession while transporting the hazardous waste. The registration certificate shall be shown upon demand to any representative of the department, officer of the Department of the California Highway Patrol, any local health officer, or any public officer designated by the department. Any person registered pursuant to this section may

obtain additional copies of the registration from the department upon the payment of a fee of two dollars ($2) for each copy requested, in accordance with Section 12196 of the Government Code.

(3) The hazardous waste information required and collected for registration pursuant to this subdivision shall be recorded and maintained in the management information system operated by the Department of the California Highway Patrol.

(b) Persons transporting only septic tank, cesspool, seepage pit, or chemical toilet waste that does not contain a hazardous waste originating from other than the body of a human or animal and who hold an unrevoked registration issued by the health officer or the health officer's authorized representative pursuant to Chapter 6 (commencing with Section 25000) are exempt from the requirements of subdivision (a).

(c) Persons transporting hazardous wastes to a permitted hazardous waste facility for transfer, treatment, recycling, or disposal, which wastes do not exceed a total volume of five gallons or do not exceed a total weight of 50 pounds, are exempt from the requirements of subdivisions (a) and (e) and from the requirements of Section 25160 concerning possession of the manifest while transporting hazardous waste, upon meeting all of the following conditions:

(1) The hazardous wastes are transported in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during the transporting.

(2) Different hazardous waste materials are not mixed within a container during the transporting.

(3) If the hazardous waste is extremely hazardous waste or acutely hazardous waste, the extremely hazardous waste or acutely hazardous waste was not generated in the course of any business, and is not more than 2.2 pounds.

(4) The person transporting the hazardous waste is the producer of that hazardous waste, and the person produces not more than 100 kilograms of hazardous waste in any month.

(5) The person transporting the hazardous waste does not accumulate more than a total of 1,000 kilograms of hazardous waste onsite at any one time.

(d) Any person registered as a hazardous waste transporter pursuant to subdivision (a) is not subject to the registration requirements of Chapter 6 (commencing with Section 25000), but shall comply with those terms, conditions, orders, and directions that the health officer or the health officer's authorized representative may determine to be necessary for the protection of human health and comfort, and shall otherwise comply with the requirements for statements as provided in Section 25007. Violations of those requirements of Section 25007 shall be punished as provided in Section 25010. Proof of registration pursuant to subdivision (a) shall be submitted by mail or in person to the local health officer in the

city or county in which the registered hazardous waste transporter will be conducting the activities described in Section 25001.

(e) It is unlawful for any person to transport hazardous waste in any truck, trailer, semitrailer, vacuum tank, or cargo tank not inspected by the Department of the California Highway Patrol or to transport hazardous waste in any container, other than a container packaged pursuant to United States Department of Transportation regulations, which has not been inspected by the Department of the California Highway Patrol.

(f) Any person authorized to collect solid waste, as defined in Section 40191 of the Public Resources Code, who unknowingly transports hazardous waste to a solid waste facility, as defined in Section 40194 of the Public Resources Code, incidental to the collection of solid waste is not subject to the provisions of subdivisions (a) and (e).

(g) (1) Any person who transports latex paint, antifreeze, or small batteries pursuant to paragraph (4) of subdivision (c) of Section 25201, spent lead-acid batteries, or used oil to an authorized household hazardous waste collection facility for recycling shall not be required to have a manifest in his or her possession pursuant to paragraph (1) of subdivision (d) of Section 25160 while transporting that waste if the total amount transported in a single vehicle at one time does not exceed any of the following:

(A) A combined volume or weight of 10 gallons or 100 pounds of latex paint, antifreeze, and small batteries.

(B) Two spent lead-acid batteries.

(C) Twenty gallons of used oil, if the requirements of subparagraphs (A) and (B) of paragraph (5) of subdivision (c) of Section 25201 are met.

(2) This subdivision does not apply if any hazardous wastes or household hazardous wastes, other than latex paint, antifreeze, small batteries, spent lead-acid batteries, or used oil, are transported at the same time in the same vehicle.

(h) This section shall become operative January 1, 1995.

SEC. 101. Section 25179.13 of the Health and Safety Code is amended to read:

25179.13. (a) Not later than January 1, 1994, the department shall issue written findings based upon a reevaluation of the treatment standards adopted for hazardous waste for which incineration has been identified as a treatment method pursuant to subdivision (b) of Section 25179.6. This reevaluation shall include an assessment of all of the various treatment methods applicable to each of these hazardous wastes, the effectiveness of each type of treatment method in reducing the harmful properties or characteristics of the waste, and the overall consequences to public health and safety and the environment associated with the required implementation of each treatment method.

(b) If the department finds, based upon the reevaluation required pursuant to subdivision (a), that treating a hazardous waste with a

method other than incineration is at least as protective of the public health and safety and the environment as incineration, the department may adopt an alternative treatment standard which allows the use of that treatment method for that waste.

(c) No treatment standard shall be modified pursuant to this section unless the department first provides all interested parties with at least 60 days' notice of its pending action and holds at least three public hearings in three different areas of the state.

(d) Any treatment standard modified pursuant to this section shall become operative in its modified form prior to January 1, 1995.

SEC. 102. Section 25244.19 of the Health and Safety Code is amended to read:

25244.19. (a) On or before September 1, 1991, and every four years thereafter, each generator shall conduct a source reduction evaluation review and plan and a source reduction evaluation review and plan summary pursuant to subdivisions (b) and (c).

(b) Except as provided in subdivision (d), the source reduction evaluation review and plan required by subdivision (a) shall be conducted and completed for each site pursuant to the format adopted pursuant to subdivision (a) of Section 25244.16 and shall include, at a minimum, all of the following:

(1) The name and location of the site.

(2) The SIC Code of the site.

(3) Identification of all routinely generated hazardous waste streams which result from ongoing processes or operations that have a yearly volume exceeding 5 percent of the total yearly volume of hazardous waste generated at the site, or, for extremely hazardous waste, 5 percent of the total yearly volume generated at the site. For purposes of this paragraph, a hazardous waste exceeds 5 percent of the total yearly volume, and is subject to this article, if it is routinely generated on an ongoing basis and meets either of the following criteria:

(A) It is a hazardous waste stream processed in a wastewater treatment unit which discharges to a publicly owned treatment works or under a national pollutant discharge elimination system (NPDES) permit, as specified in the Federal Water Pollution Control Act, as amended (33 U.S.C. Sec. 1251 and following), and its weight before treatment exceeds 5 percent of the weight of the total yearly volume at the site.

(B) It is a hazardous waste stream which is not processed in a wastewater treatment unit and its weight exceeds 5 percent of the weight of the total yearly volume at the site, less the weight of any hazardous waste stream identified in subparagraph (A).

(4) For each hazardous waste stream identified in paragraph (3), the review and plan shall include all of the following information:

(A) An estimate of the quantity of hazardous waste generated.

(B) An evaluation of source reduction approaches available to the generator which are potentially viable. The evaluation shall consider at least all of the following source reduction approaches:

(i) Input change.
(ii) Operational improvement.
(iii) Production process change.
(iv) Product reformulation.

(5) A specification of, and a rationale for, the technically feasible and economically practicable source reduction measures which will be taken by the generator with respect to each hazardous waste stream identified in paragraph (3). The review and plan shall fully document any statement explaining the generator's rationale for rejecting any available source reduction approach identified in paragraph (4).

(6) An evaluation, and, to the extent practicable, a quantification, of the effects of the chosen source reduction method on emissions and discharges to air, water, or land.

(7) A timetable for making reasonable and measurable progress towards implementation of the selected source reduction measures specified in paragraph (5).

(8) Certification pursuant to subdivision (e).

(9) Any generator subject to this article shall include in its source reduction evaluation review and plan four-year numerical goals for reducing the generation of hazardous waste streams through the approaches provided for in subparagraph (B) of paragraph (4), based upon its best estimate of what is achievable in that four-year period, as follows:

(A) For those generators and waste streams subject to this program prior to January 1, 1993, the four-year numerical goals shall be included in the plan which is required to be prepared by September 1, 1995, and every four years thereafter, pursuant to subdivision (a).

(B) Any generator that is subject to this program pursuant to paragraph (3) of subdivision (d) of Section 25244.15, and was not subject to this program before January 1, 1993, shall be required to prepare its source reduction evaluation review and plan, or compliance check list, as provided in paragraph (3) of subdivision (d) of Section 25244.15, on September 1, 1993, and every four years thereafter.

(10) (A) Any generator subject to this article shall submit to the department a progress report as part of its submittal of a biennial report on March 1 of each even-numbered year pursuant to Section 66262.41 of Title 22 of the California Code of Regulations. If the generator is not required to submit a biennial report pursuant to that regulation, it shall prepare a separate progress report on the same time schedule required for the biennial report. Generators not required to submit a biennial report shall not be required to submit their prepared progress report. However, the progress report shall be subject to the requirements applicable to reports under Section 25244.21. Progress reports shall address plan implementation activities undertaken by the generator during the two years preceding the year in which the biennial report is required to be

submitted.

(B) The progress report shall briefly summarize and, to the extent practicable, quantify, in a manner which is understandable to the general public, the results of implementing the source reduction methods identified in the generator's source reduction evaluation, review, and plan for each waste stream addressed by that plan. The progress report due on March 1, 1994, and every other progress report thereafter, shall also include an estimate of the amount of reduction the generator anticipates will be achieved by the implementation of source reduction methods during the period between the preparation of the progress report and the preparation of its next progress report. This estimate shall not require any new evaluation, review, or planning, but shall be based upon the generator's existing source reduction, evaluation, review, and plan and upon the waste reduction results in the progress report. The department shall prepare a form which may be used as a convenient and expeditious method for generators to comply with the progress report requirements of this section. The department shall hold at least one public workshop concerning the development of the form.

(c) The source reduction evaluation review and plan summary required by subdivision (a) shall be completed in accordance with the format adopted pursuant to subdivision (a) of Section 25244.19 and shall include the information specified in paragraphs (1), (2), (3), and (6) of subdivision (b) and a summary of the information required pursuant to paragraphs (4) and (5) of subdivision (b).

(d) If a generator owns or operates multiple sites with similar processes, operations, and waste streams, the generator may prepare a single multisite review and plan and plan summary addressing all of these sites.

(e) Every review and plan and plan summary conducted pursuant to this section shall be submitted by the generator for review and certification by an engineer who is registered as a professional engineer pursuant to Section 6762 of the Business and Professions Code and who has demonstrated expertise in hazardous waste management, by an individual who is responsible for the processes and operations of the site, or by an environmental assessor who is registered pursuant to Section 25570.3 and who has demonstrated expertise in hazardous waste management. The engineer, individual, or environmental assessor shall certify the review and plan and plan summary only if the review and plan and plan summary meet all of the following requirements:

(1) The review and plan addresses each hazardous waste stream identified pursuant to paragraph (3) of subdivision (b).

(2) The review and plan addresses the source reduction approaches specified in subparagraph (B) of paragraph (4) of subdivision (b).

(3) The review and plan clearly sets forth the measures to be taken with respect to each hazardous waste stream for which source reduction has been found to be technically feasible and economically

practicable, with timetables for making reasonable and measurable progress, and properly documents the rationale for rejecting available source reduction measures.

(4) The plan summary meets the requirements of subdivision (c).

(5) The review and plan and plan summary does not merely shift hazardous waste from one environmental medium to another environmental medium by increasing emissions or discharges to air, water, or land.

(f) At the time a review and plan or a plan summary is submitted to the department, the generator shall certify that the generator has implemented, is implementing, or will be implementing, the source reduction measures identified in the review and plan or the plan summary according to the implementation schedule contained in the review and plan or the plan summary. A generator may determine not to implement a measure selected in paragraph (5) of subdivision (b) only if the generator determines, upon conducting further analysis or due to unexpected circumstances, that the selected measure is not technically feasible or economically practicable, or if attempts to implement that measure reveal that the measure would result in, or has resulted in, any of the following:

(1) An increase in the generation of hazardous waste.

(2) An increase in the release of hazardous chemicals to other environmental media.

(3) Adverse impacts on product quality.

(4) A significant increase in the risk of an adverse impact to human health or the environment.

(g) If the generator elects not to implement the review and plan or plan summary, including, but not limited to, a selected measure pursuant to subdivision (f), the generator shall amend its review and plan and plan summary to reflect this rejection and include in the review and plan and plan summary proper documentation identifying the rationale for this rejection.

SEC. 103. Section 25698 of the Health and Safety Code is amended to read:

25698. (a) All fees payable under this chapter shall be collected by and paid to the department for deposit into the Radiation Control Fund established pursuant to Section 25804.

(b) This section shall become operative on July 1, 1993.

SEC. 104. Section 25817.1 of the Health and Safety Code is amended to read:

25817.1. The average inspection frequency for ionizing radiation machines shall be once each year for mammography X-ray units, once every three years for high-priority sources of ionizing radiation, and once every four and one-quarter years for medium-priority sources. Sources of ionizing radiation used in dentistry shall be screened for defects by mail or other offsite methodology not less frequently than once every five years, with physical inspection of the 50 percent, determined by the department to be most in need of inspection, to average at least once every six years.

SEC. 105. Section 32126 of the Health and Safety Code is amended to read:

32126. The board of directors may provide for the operation and maintenance through tenants of the whole or any part of any hospital acquired or constructed by it pursuant to this division, and for that purpose may enter into any lease agreement that it believes will best serve the interest of the district; provided, that a lease entered into with a nonprofit corporation for the operation of any hospital shall be in accordance with subdivision (p) of Section 32121, and that any lease for the operation of any hospital shall require the tenant or lessee to conform to and abide by Section 32128. No lease for the operation of an entire hospital shall run for a term in excess of 30 years. No lease for the operation of less than an entire hospital shall run for a term in excess of 10 years.

SEC. 106. Section 36005 of the Health and Safety Code is amended to read:

36005. No judicial action attacking or otherwise questioning the validity of the action of a state agency or a local public entity in giving final approval to a proposal or application which may result in housing assistance benefiting persons of low income without obtaining prior approval pursuant to Article XXXIV of the California Constitution shall be brought prior to the notice of funding commitment by the state agency or the adoption of a resolution or ordinance by the legislative body of the local public entity approving the proposal or application, nor may any such action be brought at any time after 60 days from the date of the notice of funding commitment or the date of adoption of the ordinance or resolution approving the proposal, as appropriate.

SEC. 107. Section 1776 of the Labor Code is amended to read:

1776. (a) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public

shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) Each contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or performing the contract shall not be marked or obliterated.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. In the event that the contractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. These stipulations shall fix the responsibility for compliance with this section on the prime contractor.

(i) The director shall adopt rules consistent with the California Public Records Act, (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code) and the Information Practices Act of 1977, (Title 1.8 (commencing with Section 1798), Part 4, Division 3, Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

SEC. 108. Section 3852 of the Labor Code is amended to read:

3852. The claim of an employee, including, but not limited to, any peace officer or firefighter, for compensation does not affect his or her claim or right of action for all damages proximately resulting from the injury or death against any person other than the employer. Any employer who pays, or becomes obligated to pay compensation, or who pays, or becomes obligated to pay salary in lieu of compensation, or who pays or becomes obligated to pay an amount to the Department of Industrial Relations pursuant to Section 4706.5, may likewise make a claim or bring an action against the third person. In the latter event the employer may recover in the same suit, in addition to the total amount of compensation, damages for which he or she was liable including all salary, wage, pension, or other emolument paid to the employee or to his or her dependents. The respective rights against the third person of the heirs of an employee claiming under Section 377.60 of the Code of Civil Procedure, and an employer claiming pursuant to this section, shall be determined by the court.

SEC. 109. Section 290 of the Penal Code is amended to read:

290. (a) Any person who, since July 1, 1944, has been or is hereafter convicted in this state of the offense of assault with intent to commit rape or sodomy under Section 220, or of any offense defined in paragraphs (1), (2), (3), (4), and (6) of subdivision (a) of Section 261, or of any offense defined in Section 264.1, 266, 267, 285, 286, 288, 288a, 288.5, 289, or 647.6 or former Section 647a, subdivision (d) of Section 647, or subdivision 1 or 2 of Section 314, or of any offense involving lewd and lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; or any person who since that date or at any time hereafter is discharged or paroled from a penal institution where he or she was confined because of the commission or attempt to commit one of the above-mentioned offenses; or any person who since that date or at any time hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code; or any person who since that date has been, or is hereafter, convicted in any other state of any offense that, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall, within 30 days after the effective date of this section or within 14 days of coming into any county, city, or city and county in which he or she temporarily resides or is domiciled for that length of time, register with the chief of police of the city in which he or she is domiciled or the sheriff of the county if he or she is domiciled in an unincorporated area, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities.

(b) Any person who, after August 1, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where he

or she was confined because of the commission or attempt to commit one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign a form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement or hospital shall give one copy of the form to the person, and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy. If the conviction that makes the person subject to this section is a felony conviction, all forms shall be transmitted within those times so as to be received by the local law enforcement agency or agencies, and prosecuting agency 30 days prior to the discharge, parole, or release of the person.

(c) Any person who, after August 1, 1950, is convicted in this state of the commission or attempt to commit any of the above-mentioned offenses and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the court in which the person has been convicted and the court shall require the person to read and sign a form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, shall send one copy to the Department of Justice, and shall forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged

or paroled from the Youth Authority, to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of one or more of the following offenses, shall be subject to registration under the procedures of this section: assault with intent to commit rape, sodomy, or oral copulation, or any violation of Section 264.1, 288, 288.5, or 289 under Section 220; or any offense defined in Section 288, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, paragraph (2) of subdivision (a) of Section 261, or subdivision (a) of Section 289; or any offense under Section 264.1 involving rape in concert with force or fear of bodily injury or penetration by any foreign object in concert with force or fear of bodily injury.

(2) Any person who is discharged or paroled from the Department of the Youth Authority, to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures set forth in this section.

(3) Prior to discharge or parole from the Department of the Youth Authority, all persons subject to registration shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25 years.

(5) All records relating specifically to the registration that are in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person required to register attains the age of 25 years or has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code, whichever event occurs first. This subdivision shall not be construed to require the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) The registration shall consist of (1) a statement in writing signed by the person, giving information as may be required by the Department of Justice, and (2) the fingerprints and photograph of the person. Within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, and photograph to the Department of Justice.

(f) If any person required to register pursuant to this section

changes his or her residence address, the person shall inform, in writing within 10 days, the law enforcement agency or agencies with whom he or she last registered of the new address. The law enforcement agency or agencies shall, within three days after receipt of this information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction over the new place of residence.

(g) (1) Any person required to register under this section who violates any of its provisions is guilty of a misdemeanor. Any person who has been convicted of assault with intent to commit rape, oral copulation, or sodomy, or of any violation of Section 261, 264.1, 286, 288, 288a, 288.5, or 289, and who is required to register under this section who willfully violates any of the provisions of this section is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in a county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in a county jail and of completing probation of at least one year.

(2) Any person who has two prior convictions for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a public offense punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in state prison for 16 months, or two or three years.

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

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) The statements, photographs, and fingerprints herein required shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county, including, but not limited to, fire fighting or disaster control, the local law enforcement agency having jurisdiction over the place or places where the assignment

shall occur shall be notified within a reasonable time prior to removal of the person from the institution. This provision does not apply to any person temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision that, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) Every person who, prior to January 1, 1985, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 30 to 14 days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (f) if the person did register within 30 days.

SEC. 110. Section 290.3 of the Penal Code is amended to read:

290.3. Every person convicted of a violation of any offense listed in subdivision (a) of Section 290, in addition to any imprisonment or fine, or both, imposed for violation of the underlying offense, shall be punished by a fine of one hundred dollars ($100) upon the first conviction or a fine of two hundred dollars ($200) upon the second and each subsequent conviction, unless the court determines that the defendant does not have the ability to pay the fine.

Out of the moneys deposited with the county treasurer pursuant to this section, there shall be transferred, once a month, to the Controller for deposit in the General Fund an amount equal to all fines collected during the preceding month upon conviction of, or upon the forfeiture of bail by, any person arrested for, or convicted of, committing an offense listed in Section 290. Moneys deposited in the General Fund pursuant to this section shall be deposited in the Department of Justice Sexual Habitual Offender Fund created pursuant to paragraph (5) of subdivision (b) of Section 11170 and, when appropriated by the Legislature, shall be used for the purposes of Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4 for the purpose of monitoring, apprehending, and prosecuting sexual habitual offenders.

SEC. 111. Section 374.8 of the Penal Code is amended to read:

374.8. (a) In any prosecution under this section, proof of the elements of the offense shall not be dependent upon the requirements of Title 22 of the California Code of Regulations.

(b) Any person who knowingly causes any hazardous substance to be deposited into or upon any road, street, highway, alley, or railroad right-of-way, or upon the land of another, without the permission of the owner, or into the waters of this state is punishable by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for a term of 16 months, two years,

or three years, or by a fine of not less than fifty dollars ($50) nor more than ten thousand dollars ($10,000), or by both the fine and imprisonment, unless the deposit occurred as a result of an emergency that the person promptly reported to the appropriate regulatory authority.

(c) For purposes of this section, "hazardous substance" means either of the following:

(1) Any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the environment, including, but not limited to, hazardous waste and any material that the administering agency or a handler, as defined in Chapter 6.91 (commencing with Section 25410) of Division 20 of the Health and Safety Code, has a reasonable basis for believing would be injurious to the health and safety of persons or harmful to the environment if released into the environment.

(2) Any substance or chemical product for which one of the following applies:

(A) The manufacturer or producer is required to prepare a MSDS, as defined in Section 6374 of the Labor Code, for the substance or product pursuant to the Hazardous Substances Information Training Act (Chapter 2.5 (commencing with Section 6360) of Part 1 of Division 5 of the Labor Code) or pursuant to any applicable federal law or regulation.

(B) The substance is described as a radioactive material in Chapter 1 of Title 10 of the Code of Federal Regulations maintained and updated by the nuclear Regulatory Commission.

(C) The substance is designated by the Secretary of Transportation in Chapter 27 (commencing with Section 1801) of the appendix to Title 49 of the United States Code and taxed as a radioactive substance or material.

(D) The materials listed in subdivision (b) of Section 6382 of the Labor Code.

SEC. 112. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation and who voluntarily acted in concert with another person either personally or by aiding and abetting another person shall receive an additional two, three, or four years in the state prison, at the court's discretion.

(c) For the purpose of imposing an additional term under subdivision (a) or (b), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from also imposing a sentence enhancement pursuant to Section 12022.5 or 12022.55, or any other provision of law.

(d) A person who is punished pursuant to subdivision (a) or (b) also shall receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in which it was found by the trier of fact or admitted by the defendant that the crime was committed because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation. This additional term shall only apply where a sentence enhancement is not imposed pursuant to Section 667 or 667.5.

(e) The additional term in subdivisions (a), (b), and (d) shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(f) The additional term in subdivisions (a), (b), and (d) shall be in addition to any other punishment provided by law.

(g) Notwithstanding any other law, the court may strike the additional term in subdivisions (a), (b), and (d) if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

SEC. 113. Section 457.1 of the Penal Code is amended to read:

457.1. (a) As used in this section, "arson" means a violation of Section 451 or 453.

(b) Upon a conviction of the offense of arson or attempted arson, or upon the discharge or parole of any person from the Department of the Youth Authority for the commission of the offense of arson or attempted arson, the court may impose, in addition to any other penalty prescribed by law, a requirement that the person shall register with the chief of police of the city in which he or she resides, or with the sheriff of the county if he or she resides in an unincorporated area, within 30 days of coming into any county or city in which he or she expects to reside or is temporarily domiciled for at least 30 days. The court may require the person to register under this subdivision only if it finds any of the following:

(1) The person committing the offense has previously been convicted of, or, if a juvenile, has previously been adjudicated to have committed, a violation of Section 451 or 453.

(2) The person is convicted of, or, if a juvenile, adjudicated to have committed, multiple counts of Section 451 or 453, relating to different events or occurrences.

(3) The person in committing the offense exhibited compulsive behavior.

(c) Any person required to register pursuant to this section who is discharged or paroled from a jail, prison, school, road camp, or

other penal institution, or from the Department of the Youth Authority where he or she was confined because of the commission or attempted commission of arson, shall, prior to the discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement. The official shall require the person to read and sign the form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The official in charge of the place of confinement shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement shall give one copy of the form to the person, and shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy. All forms shall be transmitted in time so as to be received by the local law enforcement agency and prosecuting agency 30 days prior to the discharge, parole, or release of the person.

(d) The duty to register under this subdivision for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25 years.

(e) All records relating specifically to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person required to register under this subdivision for offenses adjudicated by a juvenile court attains the age of 25 years or has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code, whichever event occurs first. This subdivision shall not be construed to require the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by the court under Section 781 of the Welfare and Institutions Code.

(f) Any person who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine shall, prior to the release or discharge, be informed of his or her duty to register under this section by the court in which he or she has been convicted, and the court shall require the person to read and sign the form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon his or her release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, and shall send two copies to the Department of Justice, which, in turn, shall

forward one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(g) The registration shall consist of (1) a statement in writing signed by the person, giving the information as may be required by the Department of Justice, and (2) the fingerprints and photograph of the person. Within three days thereafter, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the Department of Justice.

(h) If any person required to register by this section changes his or her residence address, he or she shall inform, in writing within 10 days, the law enforcement agency with whom he or she last registered of his or her new address. The law enforcement agency shall, within three days after receipt of the information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence.

(i) In the case of a person convicted for the first time of arson, the person shall be required to comply with the requirements of this section only for a period of five years after the discharge from prison, release from jail, or termination of probation or parole of the person convicted.

(j) Any person required to register under this section who violates any of the provisions thereof is guilty of a misdemeanor. Any person who has been convicted of arson or attempted arson and who is required to register under this section who willfully violates any of the provisions thereof is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in the county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in the county jail and of completing probation of at least one year.

(k) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the Board of Prison Terms, the Department of the Youth Authority, or the court, as the case may be, shall order the parole or probation of that person revoked.

(*l*) The statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(m) In any case in which a person who would be required to register pursuant to this section is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county, including, but not limited to, fire fighting or disaster control, the local law enforcement agency having jurisdiction over the place or places where that assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person temporarily

released under guard from the institution where he or she is confined.

(n) Nothing in this section shall be construed to conflict with Section 1203.4 concerning termination of probation and release from penalties and disabilities of probation.

A person required to register under this section may initiate a proceeding under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 and, upon obtaining a certificate of rehabilitation, shall be relieved of any further duty to register under this section. This certificate shall not relieve the petitioner of the duty to register under this section for any offense subject to this section of which he or she is convicted in the future.

SEC. 114. Section 549 of the Penal Code is amended to read:

549. Any firm, corporation, partnership, or association, or any person acting in his or her individual capacity, or in his or her capacity as a public or private employee, who solicits, accepts, or refers any business to or from any individual or entity with the knowledge that, or with reckless disregard for whether, the individual or entity for or from whom the solicitation or referral is made, or the individual or entity who is solicited or referred, intends to violate Section 1871.1 or 1871.4 of the Insurance Code is guilty of a crime, punishable upon a first conviction by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16 months, two years, or three years, or by a fine not exceeding ten thousand dollars ($10,000), or by both that fine and imprisonment. A second or subsequent conviction is punishable by imprisonment in the state prison.

SEC. 115. Section 602 of the Penal Code is amended to read:

602. Notwithstanding Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended

to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for, any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any such lands, whether covered by water or not, without the license of the owner or legal occupant; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any such lands.

(h) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(i) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands, the owner's agent, or the person in lawful possession.

(j) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent, or the person in lawful possession.

(k) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and doing one or more of the following:

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent, or the person in lawful possession to leave the lands.

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands.

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands.

(4) Discharging any firearm.

(*l*) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(m) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to or lawfully occupied by another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession.

(n) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession and, upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent, or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. This subdivision shall not apply to persons engaged in lawful labor union activities that are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California Constitution or the United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(o) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(p) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a

regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances are such as to indicate to a reasonable person that the person has no apparent lawful business to pursue.

(q) Knowingly skiing in an area or on a ski trail that is closed to the public and has signs posted indicating the closure.

(r) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(s) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(t) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision, the following definitions shall control:

(A) "Airport operations area" means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use

or public vehicular traffic.

(B) "Authorized personnel" means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) "Airport" means any facility whose function is to support commercial aviation.

SEC. 116. Section 653m of the Penal Code is amended to read:

653m. (a) Every person who, with intent to annoy, telephones another and addresses to or about the other person any obscene language or addresses to the other person any threat to inflict injury to the person or property of the person addressed or any member of his or her family, is guilty of a misdemeanor.

(b) Every person who makes repeated telephone calls with intent to annoy another person at his or her residence, is, whether or not conversation ensues from making the telephone call, guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls made in good faith.

(c) Every person who makes repeated telephone calls with the intent to annoy another person at his or her place of work is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment. Nothing in this subdivision shall apply to telephone calls made in good faith. This subdivision applies only if one or both of the following circumstances exist:

(1) There is a temporary restraining order, an injunction, or any other court order, or any combination of these court orders, in effect prohibiting the behavior described in this section.

(2) The person makes repeated telephone calls with the intent to annoy another person at his or her place of work, totaling more than 10 times in a 24-hour period, whether or not conversation ensues from making the telephone call, and the repeated telephone calls are made to the workplace of an adult or fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the person has a child or has had a dating or engagement relationship or is having a dating or engagement relationship.

(d) Any offense committed by use of a telephone as provided in this section may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received.

(e) Subdivision (a), (b), or (c) is violated when the person acting with intent to annoy makes a telephone call requesting a return call and performs the acts prohibited under subdivision (a), (b), or (c) upon receiving the return call.

(f) If probation is granted, or the execution or imposition of sentence is suspended, for any person convicted under this section,

the court may order as a condition of probation that the person participate in counseling.

SEC. 117. Section 853.6 of the Penal Code is amended to read:

853.6. (a) In any case in which a person is arrested for an offense declared to be a misdemeanor, including a violation of any city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter. If the person is released, the officer or superior shall prepare in duplicate a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. If, pursuant to subdivision (i), the person is not released prior to being booked and the officer in charge of the booking or his or her superior determines that the person should be released, the officer or superior shall prepare a written notice to appear in a court.

In any case in which a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, as defined in subdivision (b) of Section 13700, the person shall be taken before a magistrate instead of being released according to the procedures set forth in this chapter, unless the arresting officer determines that there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested.

Nothing in this subdivision shall be construed to affect a defendant's ability to be released on bail or on his or her own recognizance.

(b) Unless waived by the person, the time specified in the notice to appear shall be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the magistrate.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by that court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give his or her written promise to appear in court as specified in the notice by signing the duplicate notice which shall be retained by the officer. Upon the signing of the duplicate notice, the arresting officer shall immediately release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice, as follows:

(1) It shall be filed with the magistrate if the offense charged is an infraction.

(2) It shall be filed with the magistrate if the prosecuting attorney has previously directed the officer to do so.

(3) The duplicate notice and underlying police reports in support

of the charge or charges shall be filed with the prosecuting attorney in cases other than those specified in paragraphs (1) and (2).

If the duplicate notice is filed with the prosecuting attorney, he or she, within his or her discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified in the duplicate notice within 25 days from the time of arrest. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. The failure by the prosecutor to file the notice or formal complaint within 25 days of the time of the arrest shall not bar further prosecution of the misdemeanor charged in the notice to appear. However, any further prosecution shall be preceded by a new and separate citation or an arrest warrant.

Upon the filing of the notice with the magistrate by the officer, or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail that, in his or her judgment, in accordance with Section 1275, is reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by him or her in the form set forth in Section 815a. The defendant may, prior to the date upon which he or she promised to appear in court, deposit with the magistrate the amount of bail set by the magistrate. At the time the case is called for arraignment before the magistrate, if the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may, in his or her discretion, order that no further proceedings shall be had in the case, unless the defendant has been charged with a violation of Section 374.3 or 374.7 of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and he or she has previously been convicted of a violation of that section or a violation that is punishable under that section, except that, in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings be had in the case.

Upon the making of the order that no further proceedings be had, all sums deposited as bail immediately shall be paid into the county treasury for distribution pursuant to Section 1463.

(f) No warrant shall be issued for the arrest of a person who has given a written promise to appear in court, unless and until he or she has violated that promise or has failed to deposit bail, to appear for arraignment, trial, or judgment, or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer may book the arrested person prior to release, indicate on the citation that the arrested person shall appear at the arresting agency to be booked, or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court. If it is indicated on the citation that the arrested person shall be

booked or fingerprinted prior to the date of the person's court appearance, the arresting agency at the time of booking or fingerprinting shall provide the arrested person with verification of the booking or fingerprinting by either making an entry on the citation or providing the arrested person a verification form established by the arresting agency. If it is indicated on the citation that the arrested person is to be booked or fingerprinted, the magistrate, judge, or court shall, before the proceedings begin, order the defendant to provide verification that he or she was booked or fingerprinted by the arresting agency. If the defendant cannot produce the verification, the magistrate, judge, or court shall require that the defendant be booked or fingerprinted by the arresting agency before the next court appearance and that the defendant provide the verification at the next court appearance, unless both parties stipulate that booking or fingerprinting is not necessary.

(h) A peace officer shall use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person without a warrant pursuant to Section 836 or in which he or she has taken custody of a person pursuant to Section 847.

(i) Whenever any person is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth in this chapter unless one of the following is a reason for nonrelease, in which case the arresting officer may release the person, or the arresting officer shall indicate, on a form to be established by his or her employing law enforcement agency, which of the following was a reason for the nonrelease:

(1) The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others.

(2) The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety.

(3) The person was arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.

(4) There were one or more outstanding arrest warrants for the person.

(5) The person could not provide satisfactory evidence of personal identification.

(6) The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested.

(7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.

(8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

(9) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be stated specifically.

The form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release him or her for custody before trial.

(j) Once the arresting officer has prepared the written notice to appear and has delivered a copy to the person arrested, the officer shall deliver the remaining original and all copies as provided by subdivision (e).

Any person, including the arresting officer and any member of the officer's department or agency, or any peace officer, who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed, the face side of the remaining original or any copy of a citation that was retained by the officer, for any reason, before it is filed with the magistrate or with a person authorized by the magistrate to receive deposit of bail, is guilty of a misdemeanor.

If, after an arrested person has signed and received a copy of a notice to appear, the arresting officer determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the court.

If the magistrate makes a finding that there are grounds for dismissal, the finding shall be entered in the record and the charges dismissed.

Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for dismissal.

(k) For purposes of this section, the term "arresting agency" includes any other agency designated by the arresting agency to provide booking or fingerprinting services.

SEC. 118. Section 999t of the Penal Code is amended to read:

999t. (a) An individual may be the subject of a child abuser prosecution effort who is under arrest for the sexual assault of a child as defined in Section 11165.

(b) In applying the child abuser selection criteria set forth above: (1) a district attorney may elect to limit child abuser prosecution efforts to persons arrested for any one or more of the offenses described in subdivision (a) if crime statistics demonstrate that the incidence of such one or more offenses presents a particularly serious problem in the county; (2) a district attorney shall not reject cases for filing exclusively on the basis that there is a family or personal relationship between the victim and the alleged offender.

(c) In exercising the prosecutorial discretion granted by Section 999v, the district attorney shall consider the character, the background, and the prior criminal background of the defendant.

SEC. 119. Section 1000.6 of the Penal Code is amended to read:

1000.6. (a) Upon the determination of the judge presiding, this

chapter shall apply whenever a case is before the court upon an accusatory pleading for an act of domestic violence that is charged as, or reduced to, a misdemeanor and all of the following apply to the defendant:

(1) The defendant has no conviction for any offense involving violence within seven years prior to the alleged commission of the charged divertible offense.

(2) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.

(3) The defendant has not been diverted pursuant to this chapter within five years prior to the charged divertible offense.

Notwithstanding the foregoing, the provisions of this chapter are not applicable to a person who is charged with a violation of subdivision (a) of Section 245 or Section 273.5.

(b) The prosecuting attorney shall, and the defense attorney may, review his or her file to determine whether or not paragraphs (1) to (3), inclusive, of subdivision (a) are applicable to the defendant. If the defendant is found eligible, the prosecuting attorney shall notify the court, the defendant, and the defense attorney, and the defense attorney may move that the defendant be diverted pursuant to this chapter. If the defendant is found by the prosecuting attorney to be ineligible for diversion, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney.

(c) No admission of guilt shall be required of a defendant in order for this chapter to be applicable.

(d) As used in this chapter "domestic violence" means intentionally or recklessly causing or attempting to cause bodily injury to a family or household member or placing a family or household member in reasonable apprehension of imminent serious bodily injury to himself or herself or another.

(e) As used in this chapter "family or household member" means a spouse, former spouse, parent, any other person related by consanguinity, or any person who regularly resides or who within the previous six months regularly resided in the household. "Family or household member" does not include a child.

SEC. 120. Section 1001.65 of the Penal Code is amended to read:

1001.65. (a) A district attorney may collect a fee if his or her office collects and processes a bad check. The amount of the fee shall not exceed twenty-five dollars ($25) for each bad check in addition to the actual amount of any bank charges incurred by the victim as a result of the offense.

(b) Notwithstanding subdivision (a), if a bad check case is not referred to a diversion program pursuant to this chapter, the court may impose a bad check collection fee for the collection and processing of a bad check by the district attorney of not more than twenty-five dollars ($25) for each bad check in addition to the actual amount of any bank charges incurred by the victim as a result of the

offense, not to exceed one thousand dollars ($1,000) in the aggregate. The court also may, as a condition of probation, require a defendant to participate in and successfully complete a check writing education class. If so required, the court shall make inquiry into the financial condition of the defendant and, upon a finding that the defendant is able in whole or part to pay the expense of the education class, the court may order him or her to pay for all or part of that expense.

(c) If the district attorney elects to collect any fee for bank charges incurred by the victim pursuant to this section, that fee shall be paid to the victim for any bank fees that the victim may have been assessed. In no event shall reimbursement of a bank charge to the victim pursuant to subdivision (a) or (b) exceed ten dollars ($10) per check.

SEC. 121. Section 1048.1 of the Penal Code is amended to read:

1048.1. In scheduling a trial date at an arraignment in superior court involving an alleged sexual assault offense, as described in subdivisions (a) and (b) of Section 11165.1, or an alleged child abuse offense, as described in Section 11165.6, reasonable efforts shall be made to avoid setting that trial, as assigned to a particular prosecuting attorney, on the same day that another trial is set involving the same prosecuting attorney.

SEC. 122. Section 1203.1g of the Penal Code is amended to read:

1203.1g. In any case in which a defendant is convicted of sexual assault on a minor, and the defendant is eligible for probation, the court, as a condition of probation, shall order him or her to make restitution for the costs of medical or psychological treatment incurred by the victim as a result of the assault and that he or she seek and maintain employment and apply that portion of his or her earnings specified by the court toward those costs.

As used in this section, "sexual assault" has the meaning specified in subdivisions (a) and (b) of Section 1165.1. The defendant is entitled to a hearing concerning any modification of the amount of restitution based on the costs of medical and psychological treatment incurred by the victim subsequent to the issuance of the order of probation.

SEC. 123. Section 1463.007 of the Penal Code is amended to read:

1463.007. Notwithstanding any other provision of law, any county or court that implements or has implemented a comprehensive program to identify and collect fines and forfeitures that have not been paid after 60 days from the date on which they were due and payable, with or without warrant having been issued against the alleged violator, which are not being paid through time payments and for which the base fine excluding state and county penalties is at least one hundred dollars ($100), may deduct and deposit in the county treasury the cost of operating that program from any revenues collected thereby, prior to making any distribution of revenues to other governmental entities required by any other provision of law. For purposes of this section, a comprehensive collection program shall be a separate and distinct revenue

collection activity and shall include at least 10 of the following components:

(a) Monthly bill statements to all debtors.

(b) Telephone contact with delinquent debtors to apprise them of their failure to meet payment obligations.

(c) Issuance of warning letters to advise delinquent debtors of an outstanding obligation.

(d) Requests for credit reports to assist in locating delinquent debtors.

(e) Access to Employment Development Department employment and wage information.

(f) The generation of monthly delinquent reports.

(g) Participation in the Franchise Tax Board's tax intercept program.

(h) The use of Department of Motor Vehicles information to locate delinquent debtors.

(i) The use of wage and bank account garnishments.

(j) The imposition of liens on real property and proceeds from the sale of real property held by a title company.

(k) The filing of objections to the inclusion of outstanding fines and forfeitures in bankruptcy proceedings.

(*l*) Coordination with the probation department to locate debtors who may be on formal or informal probation.

(m) The initiation of drivers' license suspension actions where appropriate.

(n) The capability to accept credit card payments.

Any county that exercises the authority granted in this section for the purpose of enhancing its revenue collections shall file an annual report of its activities with the Legislature.

This section shall be repealed on June 30, 1994, unless a later enacted statute, which is enacted before June 30, 1994, deletes or extends that date.

SEC. 124. Section 1465.5 of the Penal Code is amended to read:

1465.5. (a) An assessment of two dollars ($2) for every ten dollars ($10) or fraction thereof, for every fine, forfeiture, or parking penalty imposed and collected pursuant to Section 42001.5 of the Vehicle Code for violation of Section 22507.8 of the Vehicle Code, may be imposed by each county upon the adoption of a resolution by the board of supervisors. An assessment imposed by this section shall be collected and disbursed as provided in Section 9394.5 of the Welfare and Institutions Code.

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

SEC. 125. Section 4532 of the Penal Code is amended to read:

4532. (a) Every prisoner arrested and booked for, charged with, or convicted of a misdemeanor, and every person committed under the terms of Section 5654, 5656, or 5677 of the Welfare and Institutions Code as an inebriate, who is confined in any county or

city jail, prison, industrial farm, or industrial road camp, is engaged on any county road or other county work, is in the lawful custody of any officer or person, is employed or continuing in his or her regular educational program or authorized to secure employment or education away from the place of confinement, pursuant to the Cobey Work Furlough Law (Section 1208), is authorized for temporary release for family emergencies or for purposes preparatory to his or her return to the community pursuant to Section 4018.6, or is a participant in a home detention program pursuant to Section 1203.016, and who thereafter escapes or attempts to escape from the county or city jail, prison, industrial farm, or industrial road camp or from the custody of the officer or person in charge of him or her while engaged in or going to or returning from the county work or from the custody of any officer or person in whose lawful custody he or she is, is guilty of a felony and, if the escape or attempt to escape was not by force or violence, is punishable by imprisonment in the state prison for a determinate term of one year and one day, or in a county jail not exceeding one year. However, if the escape or attempt to escape is by force or violence, the person is guilty of a felony, punishable by imprisonment in the state prison for two, four, or six years to be served consecutively, or in a county jail not exceeding one year. When the second term of imprisonment is to be served in a county jail, it shall commence from the time the prisoner otherwise would have been discharged from jail.

The willful failure of a prisoner, whether convicted of a felony or a misdemeanor, employed or continuing in his or her regular educational program, authorized to secure employment or education pursuant to the Cobey Work Furlough Law (Section 1208), authorized for temporary release for family emergencies or for purposes preparatory to his or her return to the community pursuant to Section 4018.6, or permitted to participate in a home detention program pursuant to Section 1203.016 to return to the place of confinement not later than the expiration of a period during which, pursuant to that law, he or she is authorized to be away from that place of confinement, is an escape from the place of confinement punishable as provided in this subdivision.

A conviction of violation of this subdivision, not by force or violence, shall not be charged as a prior felony conviction in any subsequent prosecution for a public offense.

(b) Every prisoner arrested and booked for, charged with, or convicted of a felony, and every person committed by order of the juvenile court, who is confined in any county or city jail, prison, industrial farm, or industrial road camp, is engaged on any county road or other county work, is in the lawful custody of any officer or person, or is confined pursuant to Section 4011.9, who escapes or attempts to escape from a county or city jail, prison, industrial farm, or industrial road camp or from the custody of the officer or person in charge of him or her while engaged in or going to or returning from the county work or from the custody of any officer or person

in whose lawful custody he or she is, or from confinement pursuant to Section 4011.9, is guilty of a felony and, if the escape or attempt to escape was not by force or violence, is punishable by imprisonment in the state prison for 16 months, two years, or three years, to be served consecutively, or in a county jail not exceeding one year. If the escape or attempt to escape is by force or violence, the person is guilty of a felony, punishable by imprisonment in the state prison for a full term of two, four, or six years to be served consecutively to any other term of imprisonment, commencing from the time the person otherwise would have been released from imprisonment and the term shall not be subject to reduction pursuant to subdivision (a) of Section 1170.1, or in a county jail for a consecutive term not to exceed one year, that term to commence from the time the prisoner otherwise would have been discharged from jail.

(c) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a felony offense under this section in that he or she escaped or attempted to escape from a secure main jail facility, from a court building, or while being transported between the court building and the jail facility. In any case in which a person is convicted of this offense designated as a misdemeanor, he or she shall be confined in a county jail for not less than 90 days nor more than one year except in unusual cases where the interests of justice would best be served by the granting of probation. For the purposes of this subdivision, "main jail facility" means the facility used for the detention of persons pending arraignment, after arraignment, during trial, and upon sentence or commitment. The facility shall not include an industrial farm, industrial road camp, work furlough facility, or any other nonsecure facility used primarily for sentenced prisoners. As used in this subdivision, "secure" means that the facility contains an outer perimeter characterized by the use of physically restricting construction, hardware, and procedures designed to eliminate ingress and egress from the facility except through a closely supervised gate or doorway.

If the court grants probation under this subdivision, it shall specify the reason or reasons for that order on the court record.

Any sentence imposed under this subdivision shall be served consecutive to any other sentence in effect or pending.

SEC. 126. Section 6242 of the Penal Code is amended to read:

6242. (a) The county shall assume full responsibility to administer and operate the center and program consistent with the criteria set forth in this chapter and those established by the board. This shall include maintenance and compliance with all codes, regulations, and health standards.

(b) The county shall select a local governmental department to operate the facility in accordance with the standards and oversight provided for in this chapter.

The facility shall be owned by the department for the duration of the payment of the bond used to finance construction of the facility. Upon completion of bond repayment, ownership of the facility shall be vested in the county. Ownership of a county facility renovated with funds awarded pursuant to this chapter shall be by the department for the period of bond repayment, after which ownership shall revert to the county. The department shall retain the option to lease from the county no less than 50 percent of inmate beds after completion of bond repayment.

If a county willfully terminates its participation in this act prior to completion of bond repayment or if its grant is terminated by the board for noncompliance with program regulations, ownership of the facility shall remain vested in the department. The department shall retain the option to lease as provided in this subdivision.

(c) Counties or the department shall operate all services and programs in secure facilities pursuant to this chapter with only county or state merit system employees, except that private nonprofit providers or individual professionals with demonstrated expertise and community experience also may be utilized to provide substance abuse treatment programs. Treatment programs outside secure facilities pursuant to this chapter may be provided only by county or state staff, by private nonprofit providers, or by individual professionals with demonstrated expertise and experience in providing services to this population of the community.

(d) Custody in secure facilities shall be provided by peace officers, as defined in Sections 830.1, 830.5, and 830.55, or custodial officers, as defined in Sections 831 and 831.5, who have satisfactorily met the minimum selection and training standards for corrections officers, as prescribed by the board under Section 6035.

(e) Parolees, parole violators, and state prisoners shall remain under overall supervision of state parole officers.

(f) The department shall contract to reimburse the county for allotted bed space and programming for state offenders based on actual cost plus a reasonable fee, but in no instance shall that amount exceed the average cost of housing an inmate in a state prison facility, as determined annually by the director.

(g) A county may bill the state for services provided to state parolees pursuant to this chapter on a pro rata basis of the cost of providing the programs and services, if requested by the department.

(h) The department and the board, as well as participating counties, shall seek funding from the federal government and from private foundation sources to help meet the costs of the programs outlined in this chapter.

(i) It shall be the responsibility of the board, the department, and the design and implementation panel to keep abreast of improvements in programs of the types established by this chapter, and to attempt to revise and update programs as state-of-the-art advances develop.

(j) Requests for proposals shall be ready for submission to eligible counties within nine months after the effective date of this chapter. Eligible counties shall submit proposals within six months after the request for proposals is submitted.

(k) An amount totaling no more than 1½ percent of the total amount of funds to be disbursed under this chapter is hereby appropriated from the 1990 Prison Construction Fund and the 1990–B Prison Construction Fund to the board to be used for administrative costs.

(*l*) Following formal acceptance of proposals submitted by counties, the board shall have authority to modify, expand, or revise county programs, if requested by counties, or if the board concludes that changes should be made to improve, expand, or reduce the scope or approach of programs. This shall be done after formal notice to a county of proposed changes and opportunity for a county to submit evidence. The board also shall be able to recommend additional or reduced funding for a program, if funding becomes available upon appropriation by the Legislature.

SEC. 127. Section 12022.9 of the Penal Code is amended to read:

12022.9. (a) Any person who, during the commission or attempted commission of a felony, knows or reasonably should know that the victim is pregnant, with intent to inflict injury, and without the consent of the woman, personally inflicts injury upon a pregnant woman that results in the termination of the pregnancy shall, in addition and consecutive to the punishment prescribed by the felony or attempted felony of which the person has been convicted, be punished by an additional term of five years in the state prison. The additional term provided in this subdivision shall not be imposed unless the fact of that injury is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

Nothing in this subdivision shall be construed to affect the applicability of subdivision (a) of Section 187 of the Penal Code.

(b) (1) Any person convicted of a violation of subdivision (c) of Section 12034 shall, in addition and consecutive to the punishment for that violation, be punished by an additional term of four years, if, as a result of the defendant personally, willfully, and maliciously discharging the firearm, the victim suffers paralysis or paraparesis of a major body part, including, but not limited to, the entire hand or foot.

(2) Any person convicted of a violation of Section 246 shall, in addition and consecutive to the punishment for that violation, be punished by an additional term of four years, if, as a result of the defendant personally, willfully, and maliciously discharging the firearm at an occupied motor vehicle from another motor vehicle, the victim suffers paralysis or paraparesis of a major body part, including, but not limited to, the entire hand or foot.

(3) For purposes of this subdivision:

(A) "Paralysis" means a major or complete loss of motor function resulting from injury to the nervous system or to a muscular

mechanism.

(B) "Paraparesis" means a significant weakness of a major body part, including, but not limited to, the entire hand or foot, causing the extremity to be functionally impaired and rendered useless to assist with one of the basic skills in life such as eating or walking.

(C) The additional term provided in this section shall not be imposed unless the fact of the injury is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

SEC. 128. Section 12288.5 of the Penal Code is amended to read:

12288.5. (a) No peace officer or dispatcher shall broadcast over a police radio that an individual has registered, or has obtained a permit to possess, an assault weapon pursuant to this chapter, unless there exists a reason to believe in good faith that one of the following conditions exist:

(1) The individual has engaged, or may be engaged, in criminal conduct.

(2) The police are responding to a call in which the person allegedly committing a criminal violation may gain access to the assault weapon.

(3) The victim, witness, or person who reported the alleged criminal violation may be using the assault weapon to hold the person allegedly committing the criminal violation or may be using the weapon in defense of himself, herself, or other persons.

(b) This section shall not prohibit a peace officer or dispatcher from broadcasting over a police radio that an individual has not registered, or has not obtained a permit to possess, an assault weapon pursuant to this chapter.

(c) This section does not limit the transmission of assault weapon ownership status via law enforcement computers or any other medium that is legally accessible only to peace officers or other authorized personnel.

SEC. 129. Section 8572 of the Probate Code is amended to read:

8572. (a) Acceptance of appointment by a nonresident personal representative is equivalent to and constitutes an irrevocable and binding appointment by the nonresident personal representative of the Secretary of State to be the attorney of the personal representative for the purpose of this article. The appointment of the nonresident personal representative also applies to any personal representative of a deceased nonresident personal representative.

(b) All lawful processes, and notices of motion under Section 377.41 of the Code of Civil Procedure, in an action or proceeding against the nonresident personal representative with respect to the estate or founded on or arising out of the acts or omissions of the nonresident personal representative in that capacity may be served on the Secretary of State as the attorney for service of the nonresident personal representative.

SEC. 130. Section 8574 of the Probate Code is amended to read:

8574. (a) Service of process or notice of a motion under Section 377.41 of the Code of Civil Procedure in any action or proceeding

against the nonresident personal representative shall be made by delivering to and leaving with the Secretary of State two copies of the summons and complaint or notice of motion and either of the following:

(1) A copy of the statement by the nonresident personal representative under Section 8573.

(2) If the nonresident personal representative has not filed a statement under Section 8573, a copy of the letters issued to the nonresident personal representative together with a written statement signed by the party or attorney of the party seeking service that sets forth an address for use by the Secretary of State.

(b) The Secretary of State shall promptly mail by registered mail one copy of the summons and complaint or notice of motion to the nonresident personal representative at the address shown on the statement delivered to the Secretary of State.

(c) Personal service of process, or notice of motion, on the nonresident personal representative wherever found shall be the equivalent of service as provided in this section.

SEC. 131. Section 10332 of the Public Contract Code is amended to read:

10332. Any state agency that receives delegated authority to purchase materials, supplies, and equipment shall be authorized, at a minimum, to make the following types of purchases:

(a) Purchases not exceeding the dollar value established pursuant to Section 10330.

(b) Purchases in any amount of commodities available under an unexpired statewide or regional commodities contract. Purchases of commodities for which a valid statewide or regional commodities contract is in effect may not be made, without the approval of the office, from a vendor other than the vendor with whom the state has a valid contract.

(c) Purchases in any amount of articles, materials, and supplies that state agencies are required, by Section 2807 of the Penal Code, to purchase from the Prison Industry Authority.

(d) Purchases not exceeding ten thousand dollars ($10,000) of materials, supplies, and equipment designated in price schedules that the office has established with vendors. Purchases not exceeding ten thousand dollars ($10,000) of materials, supplies, and equipment designated in price schedules may be made from a vendor other than the vendor specified on a price schedule if another vendor offers the same or an equivalent commodity at a price lower than the price established in the price schedule. The agency shall notify the office prior to making the purchase. The purchase may be made 48 hours after receipt of the notice by the office unless the office advises the agency that the commodity to be purchased is not the same or equivalent to a commodity specified on a price schedule.

(e) Purchases not exceeding ten thousand dollars ($10,000) of materials, supplies, and equipment which are available from the state warehouses but which the state agency can purchase from

another vendor at a price lower than the price charged by the department. The agency shall notify the office prior to making such a purchase. The purchase may be made 48 hours after receipt of the notice by the office unless the office advises the agency that the commodity to be purchased is not the same or equivalent to the commodity available from the state warehouses.

SEC. 132. Section 30301 of the Public Resources Code is amended to read:

30301. The commission shall consist of the following 15 members:

(a) The Secretary of the Resources Agency.

(b) The Secretary of the Business and Transportation Agency.

(c) The Chairperson of the State Lands Commission.

(d) Six representatives of the public from the state at large. The Governor, the Senate Committee on Rules, and the Speaker of the Assembly shall each appoint two of these members.

(e) Six representatives selected from six coastal regions. The Governor shall select one member from the north coast region and one member from the south central coast region. The Speaker of the Assembly shall select one member from the central coast region and one member from the San Diego coast region. The Senate Committee on Rules shall select one member from the north central coast region and one member from the south coast region. For purposes of this division, these regions are defined as follows:

(1) The north coast region consists of the Counties of Del Norte, Humboldt, and Mendocino.

(2) The north central coast region consists of the Counties of Sonoma and Marin and the City and County of San Francisco.

(3) The central coast region consists of the Counties of San Mateo, Santa Cruz, and Monterey.

(4) The south central coast region consists of the Counties of San Luis Obispo, Santa Barbara, and Ventura.

(5) The south coast region consists of the Counties of Los Angeles and Orange.

(6) The San Diego coast region consists of the County of San Diego.

SEC. 133. Section 30340 of the Public Resources Code is amended to read:

30340. The commission shall manage and budget any funds that may be appropriated, allocated, granted, or in any other way made available to the commission for expenditure.

SEC. 134. Section 42774 of the Public Resources Code is amended to read:

42774. For the purposes of implementing and enforcing this chapter, the board shall develop and maintain a list which identifies every consumer of newsprint, as defined in Section 42750, and every person who supplies a consumer of newsprint with newsprint, in the state. The board may use information from local business permits, trade publications, or any other relevant information to develop the list.

SEC. 135. Section 1802 of the Public Utilities Code is amended to read:

1802. (a) "Compensation" means payment for all or part, as determined by the commission, of reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding, and includes the fees and costs of obtaining an award under this article and of obtaining judicial review, if any.

(b) "Customer" means any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, but does not include any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission's opinion, was established or formed by a local government entity for the purpose of participating in a commission proceeding.

(c) "Expert witness fees" means recorded or billed costs incurred by a customer for an expert witness.

(d) "Other reasonable costs" means reasonable out-of-pocket expenses directly incurred by a customer that are directly related to the contentions or recommendations made by the customer that resulted in a substantial contribution.

(e) "Party" means any interested party, respondent public utility, or commission staff in a hearing or proceeding.

(f) "Proceeding" means an application, complaint, or investigation, rulemaking, alternative dispute resolution procedures in lieu of formal proceedings as may be sponsored or endorsed by the commission, or other formal proceeding before the commission.

(g) "Significant financial hardship" means either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

(h) "Substantial contribution" means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting

that contention or recommendation.

SEC. 136. Section 99243 of the Public Utilities Code is amended to read:

99243. (a) The Controller, in cooperation with the department and the operators, shall design and adopt a uniform system of accounts and records, from which the operators shall prepare and submit annual reports of their operation to the transportation planning agencies having jurisdiction over them and to the Controller within 90 days of the end of the fiscal year. The report shall specify (1) the amount of revenue generated from each source and its application for the prior fiscal year, and (2) the data necessary to determine which section, with respect to Sections 99268.1, 99268.2, 99268.3, 99268.4, 99268.5, and 99268.9, the operator is required to be in compliance with in order to be eligible for funds under this article.

(b) As a supplement to the annual report prepared pursuant to subdivision (a), each operator shall include an estimate of the amount of revenues to be generated from each source and its proposed application for the next fiscal year, and a report on the extent to which it has contracted with the Prison Industry Authority, including the nature and dollar amounts of all contracts entered into during the reporting period and proposed for the next reporting period.

(c) The Controller shall instruct the county auditor to withhold payments from the fund to any operator that has not submitted its annual report to the Controller within the time specified by subdivision (a).

(d) In establishing the uniform system of accounts and records, the Controller shall include the data required by the United States Department of Transportation and the department.

(e) Notwithstanding any other law or any regulation, including any California Administrative Code provision, the City of South Lake Tahoe may select, for purposes of this chapter, on a one-time basis, a fiscal year that does not end on June 30. After the city has sent a written notice to the Secretary of the Business, Transportation and Housing Agency and the Controller that the city has selected a fiscal year other than one ending on June 30, the fiscal year selected by the city shall be its fiscal year for all reports required by the state under this chapter.

SEC. 137. Section 53 of the Revenue and Taxation Code is amended to read:

53. (a) Except as provided in subdivision (b), the initial base year value for fruit and nut trees and grapevines subject to exemption pursuant to subdivision (i) of Section 3 of Article XIII of the California Constitution shall be the full cash value of those properties as of the lien date of their first taxable year.

(b) A county board of supervisors may, after consulting with affected local agencies within the county's boundaries, provide by ordinance that the initial base year value for replacement grapevines that are planted to replace grapevines less than 15 years of age that

were removed solely as a result of phylloxera infestation, as certified in writing by the county agricultural commissioner, shall be the base year value of the removed vines factored to the lien date of the first taxable year of the replacement vines. The assignment of base year replacement value is limited to replacement grapevines that are substantially equivalent to the vines that were replaced, and are planted on the same parcel as the replaced vines. For purposes of this subdivision, replacement vines are substantially equivalent to the vines they replace if the replacement vines are of a similar type and are planted at a similar density.

SEC. 138. Section 75.11 of the Revenue and Taxation Code is amended to read:

75.11. (a) If the change in ownership occurs or the new construction is completed on or after March 1 but on or before May 31, then there shall be two supplemental assessments placed on the supplemental roll. The first supplemental assessment shall be the difference between the new base year value and the taxable value on the current roll. In the case of a change in ownership of the full interest in the real property, the second supplemental assessment shall be the difference between the new base year value and the taxable value to be enrolled on the roll being prepared. If the change in ownership is of only a partial interest in the real property, the second supplemental assessment shall be the difference between the sum of the new base year value of the portion transferred plus the taxable value on the roll being prepared of the remainder of the property and the taxable value on the roll being prepared of the whole property. For new construction, the second supplemental assessment shall be the value change due to the new construction.

(b) If the change in ownership occurs or the new construction is completed on or after June 1 but before the succeeding March 1, then the supplemental assessment placed on the supplemental roll shall be the difference between the new base year value and the taxable value on the current roll.

(c) If there are multiple changes in ownership or multiple completions of new construction, or both, with respect to the same real property during the same assessment year, then there shall be a net supplemental assessment placed on the supplemental roll, in addition to the assessment pursuant to subdivision (a) or (b). The net supplemental assessment shall be the most recent new base year value less the sum of (1) the previous entry or entries placed on the supplemental roll computed pursuant to subdivision (a) or (b), and (2) the corresponding taxable value on the current roll or the taxable value to be entered on the roll being prepared, or both, depending on the date or dates the change of ownership occurs or new construction is completed as specified in subdivisions (a) and (b).

(d) No supplemental assessment authorized by this section shall be valid, or have any force or effect, unless it is placed on the supplemental roll on or before the applicable date specified in paragraph (1), (2), or (3), as follows:

(1) The fourth July 1 following the July 1 of the assessment year in which the event giving rise to the supplemental assessment occurred.

(2) The sixth July 1 following the July 1 of the assessment year in which the event giving rise to the supplemental assessment occurred, if the penalty provided for in Section 504 is added to the assessment.

(3) The eighth July 1 following the July 1 of the assessment year in which the event giving rise to the supplemental assessment occurred, if the change in ownership or change in control was unrecorded and a change in ownership statement required by Section 480, 480.1, or 480.2 was not filed.

For the purposes of this subdivision, "assessment year" means the period beginning annually as of 12:01 a.m. on the first day of March and ending immediately prior to the succeeding first day of March.

(e) If, before the expiration of the applicable period specified in subdivision (d) for making a supplemental assessment, the taxpayer and the assessor agree in writing to extend the period for making a supplemental assessment, correction, or claim for refund, a supplemental assessment may be made at any time prior to the expiration of that extended period. The extended period may be further extended by successive written agreements entered into prior to the expiration of the most recent extension.

SEC. 139. Section 214.02 of the Revenue and Taxation Code is amended to read:

214.02. (a) Except as provided in subdivision (b) or (c), property that is used exclusively for the preservation of native plants or animals, biotic communities, geological or geographical formations of scientific or educational interest, or open-space lands used solely for recreation and for the enjoyment of scenic beauty, is open to the general public subject to reasonable restrictions concerning the needs of the land, and is owned and operated by a scientific or charitable fund, foundation or corporation, the primary interest of which is to preserve those natural areas, and that meets all the requirements of Section 214, shall be deemed to be within the exemption provided for in subdivision (b) of Sections 4 and 5 of Article XIII of the Constitution of the State of California and Section 214.

(b) The exemption provided by this section shall not apply to any property of an organization that owns in the aggregate 30,000 acres or more in one county that were exempt under this section prior to March 1, 1983, or that are proposed to be exempt, unless the nonprofit organization that holds the property is constituted in such a way as to be fully independent of the owner of any taxable real property that is adjacent to the property otherwise qualifying for tax exemption under this section. For purposes of this section, the nonprofit organization that holds the property shall be considered fully independent if the exempt property is not used or operated by that organization or by any other person so as to benefit any officer,

trustee, director, shareholder, member, employee, contributor or bondholder of the exempt organization or operator, or the owner of any adjacent property, or any other person, through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession.

(c) The exemption provided by this section shall not apply to property that is reserved for future development.

(d) This section shall be operative from the lien date in 1983 to and including the lien date in 2002, after which date this section shall become inoperative, and as of January 1, 2003, this section is repealed.

SEC. 140. Section 6201.3 of the Revenue and Taxation Code is amended to read:

6201.3. In addition to the taxes imposed by Sections 6201, 6201.2, 6201.5, and any other provision of this part, an excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer on and after July 15, 1991, and purchased during any period in which this section is operative pursuant to Section 6201.4 at the rate of ¼ percent of the sales price of the property.

SEC. 141. Section 8272 of the Revenue and Taxation Code is amended to read:

8272. (a) The Controller shall release any levy or notice to withhold issued pursuant to this part on any property in the event the expense of the sale process exceeds the liability for which the levy is made.

(b) The Controller shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(c) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

SEC. 142. Section 8273 of the Revenue and Taxation Code is amended to read:

8273. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

SEC. 143. Section 9272 of the Revenue and Taxation Code is amended to read:

9272. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event of any of the following:

(1) The expense of the sale process exceeds the liability for which the levy is made.

(2) The Taxpayers' Rights Advocate orders the release of the levy or notice to withhold upon his or her finding that the levy or notice

to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(b) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(c) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

SEC. 144. Section 9273 of the Revenue and Taxation Code is amended to read:

9273. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

SEC. 145. Section 9276 of the Revenue and Taxation Code is amended to read:

9276. For the purposes of this part only, the board shall not revoke or suspend a person's permit pursuant to Section 8704 or 8714 unless the board has mailed a notice preliminary to revocation or suspension that indicates that the taxpayer will be suspended by a date certain pursuant to that section. The notice preliminary to suspension shall be mailed to the taxpayer at least 60 days before the date certain.

SEC. 146. Section 17207 of the Revenue and Taxation Code is amended to read:

17207. (a) For disaster losses that qualify for treatment under Section 165(i) of the Internal Revenue Code, to the extent that those losses, as computed pursuant to Section 165(a) of the Internal Revenue Code, exceed the adjusted taxable income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the adjusted taxable income of the year preceding the loss, then that "excess loss," at the election of the taxpayer, may be carried to other taxable years as provided in subdivision (b), with respect to disaster losses resulting from any of the following:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) For taxable years beginning on or after January 1, 1991, any

loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(b) For losses covered by Sections 165(c)(1) and 165(c)(2) of the Internal Revenue Code, relating to trade or business losses, losses resulting from transactions entered into for profit, and for losses covered by Section 165(c)(3) of the Internal Revenue Code, relating to personal casualty losses, the "excess loss" may be carried forward to each of the five taxable years following the year the loss is claimed. However, if there is any "excess loss" remaining after the five-year period, then 50 percent of that "excess loss" may be carried forward to each of the next 10 taxable years.

(c) The entire amount of any "excess loss" as defined in subdivision (a) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of "excess loss" over the sum of the adjusted taxable income for each of the prior taxable years to which that "excess loss" may be carried.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the following losses sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster:

(1) Any loss sustained during February 1986 as a result of storm, flooding, or any other related casualty.

(2) Any loss sustained during 1987 as a result of forest fire or any other related casualty.

(3) Any loss sustained during October 1987 as the result of earthquake, aftershock, or any other related casualty.

(4) Any loss resulting from the earthquake which occurred in October 1989, aftershock, or any other related casualty.

(5) Any loss sustained during 1990 as the result of fire in the County of Santa Barbara.

(6) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(7) For taxable years beginning on or after January 1, 1991, any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any

other related casualty.

(8) Any loss sustained during April 1992 as a result of earthquake, aftershock, or any other related casualty in the County of Humboldt.

(9) Any loss sustained during April or May 1992 as a result of riots, arson, or any other related casualty.

(10) Any loss sustained as a result of earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(11) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(e) Losses described in this section may not be taken into account in computing a net operating loss deduction under Section 17201, as modified by Sections 17276, 17276.1, and 17276.2.

(f) For purposes of this section, "adjusted taxable income" shall be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

SEC. 147. Section 17208 of the Revenue and Taxation Code is repealed.

SEC. 148. Section 17208.1 of the Revenue and Taxation Code is repealed.

SEC. 149. Section 17208.2 of the Revenue and Taxation Code is repealed.

SEC. 150. Section 17208.3 of the Revenue and Taxation Code is repealed.

SEC. 151. Section 19405 of the Revenue and Taxation Code is amended to read:

19405. (a) Any person who does any of the following shall be guilty of a felony and, upon conviction thereof, shall be fined not more than twenty thousand dollars ($20,000) or imprisoned not more than three years, or both, together with the costs of prosecution:

(1) Willfully makes and subscribes any return, statement, or other document that contains or is verified by a written declaration that it is made under the penalties of perjury, and that he or she does not believe to be true and correct as to every material matter.

(2) Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the Personal Income Tax Law, of a return, affidavit, claim, or other document that is fraudulent or is false as to any material matter, whether or not that falsity or fraud is with the knowledge or consent of the person authorized or required to present that return, affidavit, claim, or document.

(3) Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the Personal Income Tax Law, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed or advises, aids in, or connives at that execution thereof.

(4) Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or with

respect to which any tax is or shall be imposed, or any property upon which levy is authorized by Chapter 19 (commencing with Section 18801) of this part; or Chapter 5 (commencing with Section 706.010) of Division 2 of, and Chapter 8 (commencing with Section 688.010) of Division 1 of, Title 9 of Part 2 of the Code of Civil Procedure, with intent to evade or defeat the assessment or collection of any tax imposed by this part.

(5) In connection with any settlement under Section 19133, or offer of that settlement, or in connection with any closing agreement under Section 19132 or offer to enter into any such agreement, willfully does any of the following:

(A) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(B) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(b) The fact that an individual's name is signed to a return, statement, or other document filed shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him or her.

(c) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, or any agent, fiduciary, or representative of, or any other individual acting on behalf of, the taxpayer.

SEC. 152. Section 23801 of the Revenue and Taxation Code is amended to read:

23801. (a) (1) A corporation may not elect to be treated as an "S corporation" unless it has in effect for federal purposes a valid election under Section 1362(a) of the Internal Revenue Code for the same year.

(2) For income years beginning in 1987, the following shall apply:

(A) A corporation that has in effect a valid federal election for the income year beginning in 1987, shall be deemed to have elected to be treated as an "S corporation" for purposes of this part, unless that corporation elects on its return to continue to be treated as a "C corporation" for purposes of this part.

(B) A corporation to which subparagraph (A) applies, but is not required to file a return under this part, may elect to be treated as a "C corporation" for purposes of this part in the form and in the manner as the Franchise Tax Board may prescribe.

(C) A corporation that is deemed to have elected to be treated as an "S corporation" under subparagraph (A) shall, for purposes of applying the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, and Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, be deemed to have made the election to be treated as an "S corporation" on the same date as the date of its

federal election under Section 1362(a) of the Internal Revenue Code.

(3) For income years beginning in 1988 or 1989, the following shall apply:

(A) A corporation that had in effect a valid federal election for the preceding year, but was a "C corporation" for purposes of this part for that preceding year, may elect to be treated as an "S corporation" for purposes of this part by making an election in accordance with the provisions of Section 1362 of the Internal Revenue Code in the form and in the manner as the Franchise Tax Board may prescribe.

(B) A corporation that did not have in effect a valid federal election for the preceding year and that makes a federal election for the income year under Section 1362(a) of the Internal Revenue Code shall be deemed to have made an election to be treated as an "S corporation" for purposes of this part on the same date as the date of its federal election, unless that corporation elects on its return to continue to be treated as a "C corporation" for purposes of this part.

(C) A corporation to which subparagraph (B) applies, but is not required to file a return under this part, may elect to be treated as a "C corporation" for purposes of this part in such form and in such manner as the Franchise Tax Board may prescribe.

(D) A corporation that elects to be treated as an "S corporation" under subparagraph (A) for an income year beginning in 1988 shall, for purposes of applying the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, and Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, be deemed to have made the election to be treated as an "S corporation" on the same date as the date of its federal election under Section 1362(a) of the Internal Revenue Code.

(4) For income years beginning on or after January 1, 1990, the following shall apply:

(A) An election under Section 1362(a) of the Internal Revenue Code, that is first effective for an income year beginning on or after January 1, 1990, shall be an election to which subdivision (g) of Section 23051.5 applies and shall be deemed to have been made for purposes of this part on the same date as the date of the federal election, unless the corporation files a California election under clause (ii) to be treated as a "C corporation" for purposes of this part.

(i) The federal "S" election shall be reported for purposes of this part in the form and manner as prescribed by the Franchise Tax Board no later than the last date allowed for filing the federal election under Section 1362(a) of the Internal Revenue Code for that income year.

(ii) The California election to be a "C corporation" may only be made by a corporation incorporated in California or qualified to do business in California and shall be made in the form and manner prescribed by the Franchise Tax Board no later than the last date allowed for filing the federal "S" election under Section 1362(a) of

the Internal Revenue Code for that income year.

(B) A corporation that has in effect a valid election under Section 1362(a) of the Internal Revenue Code, but is a "C corporation" for purposes of this part, may elect to be treated as an "S corporation" by making an election in the form and manner as prescribed by the Franchise Tax Board at the time required for making an "S" election under Section 1362(a) of the Internal Revenue Code for that income year, unless prohibited from doing so by Section 1362(g) of the Internal Revenue Code, relating to election after termination.

(C) In the event a corporation which has in effect a valid election under Section 1362(a) of the Internal Revenue Code and is not doing business in California becomes subject to this part by qualifying to do business in California, the corporation is deemed to have made an election to be treated as an "S corporation" for the income year during which the corporation qualifies to do business in California, unless the corporation files a California election in accordance with clause (ii) to be treated as a "C corporation" for that income year.

(i) The federal "S" election shall be reported for purposes of this part within two and one-half months after qualifying to do business in California in the form and manner as prescribed by the Franchise Tax Board.

(ii) The California election to be a "C corporation" shall be made in the form and manner as prescribed by the Franchise Tax Board no later than the following:

(I) For an income year beginning in 1990, two and one-half months after qualifying to do business in California.

(II) For an income year beginning on or after January 1, 1991, the last date allowed for filing a federal "S" election under Section 1362(a) of the Internal Revenue Code for that income year.

(D) (i) A corporation that is not qualified to do business in California, but is treated as an "S corporation" for federal purposes, shall be treated as an "S corporation" for purposes of this part, and its shareholders shall be treated as shareholders of an "S corporation."

(ii) If a corporation described in clause (i) elected to be treated as a "C corporation" under this section prior to its amendment by the act adding this paragraph during the 1989–90 Regular Session, that election shall be revoked for income years beginning on or after January 1, 1990. The corporation shall be treated as an "S corporation" for purposes of this part, and its shareholders shall be treated as shareholders of an "S corporation."

(E) For purposes of this section, "qualified to do business in California" or "qualifying to do business in California" means incorporating or obtaining a certificate of qualification pursuant to the Corporations Code.

(F) For purposes of this section:

(i) A timely election to be treated as a "C corporation" shall be treated as a revocation and Section 1362(g), relating to election after termination, shall apply.

(ii) An untimely election to be treated as a "C corporation" shall be null and void and shall not be applied to either the current or any subsequent income year.

(b) If a corporation subject to tax under this part elects to be treated as an "S corporation" and has one or more shareholders who are nonresidents of this state or is a trust with a nonresident fiduciary, each of the following shall be required:

(1) Each nonresident shareholder or fiduciary shall file with the return a statement of consent by that shareholder or fiduciary to be subject to the jurisdiction of the State of California to tax the shareholder's pro rata share of the income attributable to California sources.

(2) An "S corporation" shall include in its return for each income year a list of shareholders in the form and in the manner prescribed by the Franchise Tax Board.

(3) Failure to meet the requirements of this subdivision shall be grounds for retroactive revocation of the election pursuant to this chapter.

(c) Except as provided in subdivision (d), a corporation that makes a valid election to be treated as an "S corporation" for purposes of this part shall not be included in a combined report pursuant to Article 1 (commencing with Section 25101) of Chapter 17.

(d) (1) In cases where the Franchise Tax Board determines that the reported income or loss of a group of commonly owned or controlled corporations (within the meaning of Section 25105), which includes one or more corporations electing to be treated as an "S corporation" under Chapter 4.5 (commencing with Section 23800), does not clearly reflect income (or loss) of a member of that group or represents an evasion of tax by one or more members of that group, and the Franchise Tax Board determines that the comparable uncontrolled price method prescribed by regulations pursuant to Section 482 of the Internal Revenue Code cannot practically be applied, the Franchise Tax Board may, in lieu of other methods prescribed by regulations pursuant to Section 482 of the Internal Revenue Code, apply methods of unitary combination, pursuant to Article 1 (commencing with Section 25101) of Chapter 17, to properly reflect the income or loss of the members of the group.

(2) The application of the provisions of this subdivision shall not affect the election of any corporation to be treated as an "S corporation."

(e) The tax for a "C corporation" for a short year shall be determined in accordance with Chapter 13 (commencing with Section 24631), in lieu of Section 1362(e) (5) of the Internal Revenue Code.

(f) (1) A termination of a federal election pursuant to Section 1362(d) of the Internal Revenue Code, that is not an inadvertent termination pursuant to Section 1362(f) of the Internal Revenue Code, shall simultaneously terminate the "S corporation" election for

purposes of Part 10 (commencing with Section 17001) and this part.

(2) A federal termination by revocation shall be effective for purposes of this part and shall be reported to the Franchise Tax Board in the form and manner prescribed by the Franchise Tax Board no later than the last date allowed for filing federal termination for that year under Section 1362(d) of the Internal Revenue Code.

(3) A corporation which is qualified to do business in California and has in effect a valid "S" election under Section 1362(a) of the Internal Revenue Code, may revoke its "S" election for purposes of this part without revoking its federal election. The revocation for purposes of this part shall be made by providing a written notification to the Franchise Tax Board in the form and manner prescribed by the Franchise Tax Board which includes the California corporation number and meets the requirements of Section 1362(d)(1) of the Internal Revenue Code.

(g) For income years beginning on or after January 1, 1990, if a corporation, which has in effect a valid "S" election under Section 1362(a) of the Internal Revenue Code, fails to make a "C corporation" election under clause (ii) of subparagraphs (A) and (C) of paragraph (4) of subdivision (a) or to terminate by revocation under paragraph (3) of subdivision (f), the corporation shall be treated as an "S corporation" pursuant to subparagraph (A) of paragraph (4) of subdivision (a).

SEC. 153. Section 24347.5 of the Revenue and Taxation Code is amended to read:

24347.5. (a) In lieu of Section 24347, a deduction is allowed pursuant to Section 165(i) of the Internal Revenue Code for disaster losses resulting from any of the following:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in October 1987 in California.

(5) Earthquake, aftershock, or any related casualty occurring in October 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) For income years beginning on or after January 1, 1991, any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April

or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(b) To the extent that losses under subdivision (a) exceed the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss, then that "excess loss," at the election of the taxpayer, may be carried forward to each of the five income years following the income year the loss is claimed. However, if there is any "excess loss" remaining after the five-year period, then 50 percent of that "excess loss" may be carried forward to each of the next 10 income years.

(c) The entire amount of any "excess loss" as defined in subdivision (b) shall be carried to the earliest of the income years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss that shall be carried to each of the other income years shall be the excess, if any, of the amount of "excess loss" over the sum of the net income for each of the prior income years to which that "excess loss" may be carried.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the following losses sustained in any county or city in this state that was proclaimed by the Governor to be in a state of disaster:

(1) Any loss sustained during February 1986 as a result of storm, flooding, or any other related casualty.

(2) Any loss sustained during 1987 as a result of forest fire or any other related casualty.

(3) Any loss sustained during October 1987 as the result of earthquake, aftershock, or any other related casualty.

(4) Any loss resulting from the earthquake which occurred in October 1989, aftershock, or any other related casualty.

(5) Any loss sustained during 1990 as the result of fire in the County of Santa Barbara.

(6) For income years beginning on or after January 1, 1991, any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(7) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(8) Any loss sustained during April 1992 as a result of earthquake, aftershock, or any other related casualty in the County of Humboldt.

(9) Any loss sustained during April or May 1992 as a result of riots, arson, or any other related casualty.

(10) Any loss sustained as a result of the earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other

related casualty.

(11) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(e) Any corporation subject to the provisions of Section 25101 or 25101.15 that has disaster losses pursuant to this section, shall determine the "excess loss" to be carried to other income years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses described in this section may not be taken into account in computing a net operating loss deduction under Section 24416 or 24416.1.

SEC. 154. Section 24347.6 of the Revenue and Taxation Code is repealed.

SEC. 155. Section 24347.7 of the Revenue and Taxation Code is repealed:

SEC. 156. Section 24347.8 of the Revenue and Taxation Code is repealed.

SEC. 157. Section 24347.9 of the Revenue and Taxation Code is repealed.

SEC. 158. Section 25962 of the Revenue and Taxation Code is amended to read:

25962. (a) Any person who does any of the following shall be guilty of a felony and, upon conviction thereof, shall be fined not more than one hundred thousand dollars ($100,000) or imprisoned not more than three years, or both, together with the costs of prosecution:

(1) Willfully makes and subscribes any return, statement, or other document, that contains or is verified by a written declaration that it is made under the penalties of perjury, and that he or she does not believe to be true and correct as to every material matter.

(2) Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the Bank and Corporation Tax Law, of a return, affidavit, claim or other document that is fraudulent or is false as to any material matter, whether or not that falsity or fraud is with the knowledge or consent of the person authorized or required to present that return, affidavit, claim, or document.

(3) Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the Bank and Corporation Tax Law, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed or advises, aids in, or connives at that execution thereof.

(4) Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or with respect to which any tax is or shall be imposed, or any property upon which levy is authorized by Chapter 23 (commencing with Section 26131) of this part, with intent to evade or defeat the assessment or

collection of any tax imposed by this part.

(5) In connection with any settlement under Section 25782, or offer of that settlement, or in connection with any closing agreement under Section 25781 or offer to enter into any such agreement, willfully does any of the following:

(A) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(B) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(b) The fact that an individual's name is signed to a return, statement, or other document filed shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him or her.

(c) For purposes of this section, "person" means the taxpayer, any corporation, agent, fiduciary, or representative of, or any other entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

SEC. 159. Section 30459.2 of the Revenue and Taxation Code is amended to read:

30459.2. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event of any of the following:

(1) The expense of the sale process exceeds the liability for which the levy is made.

(2) The Taxpayers' Rights Advocate orders the release of the levy or notice to withhold upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(b) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(c) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

SEC. 160. Section 30459.3 of the Revenue and Taxation Code is amended to read:

30459.3. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

SEC. 161. Section 32472 of the Revenue and Taxation Code is amended to read:

32472. (a) The board shall release any levy or notice to withhold

issued pursuant to this part on any property in the event of any of the following:

(1) The expense of the sale process exceeds the liability for which the levy is made.

(2) The Taxpayers' Rights Advocate orders the release of the levy or notice to withhold upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(b) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(c) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

SEC. 162. Section 32473 of the Revenue and Taxation Code is amended to read:

32473. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

SEC. 163. Section 40096 of the Revenue and Taxation Code is amended to read:

40096. All determinations made by the board under Article 3 (commencing with Section 40071) or Article 4 (commencing with Section 40081) are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10 percent of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

SEC. 164. Section 40212 of the Revenue and Taxation Code is amended to read:

40212. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event of any of the following:

(1) The expense of the sale process exceeds the liability for which the levy is made.

(2) The Taxpayers' Rights Advocate orders the release of the levy or notice to withhold upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(b) The board shall not sell any seized property until it first has notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

SEC. 165. Section 40213 of the Revenue and Taxation Code is amended to read:

40213. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of

Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

SEC. 166. Section 41172 of the Revenue and Taxation Code is amended to read:

41172. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event of any of the following:

(1) The expense of the sale process exceeds the liability for which the levy is made.

(2) The Taxpayers' Rights Advocate orders the release of the levy or notice to withhold upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(b) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(c) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

SEC. 167. Section 41173 of the Revenue and Taxation Code is amended to read:

41173. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

SEC. 168. Section 43523 of the Revenue and Taxation Code is amended to read:

43523. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event of any of the following:

(1) The expense of the sale process exceeds the liability for which the levy is made.

(2) The Taxpayers' Rights Advocate orders the release of the levy or notice to withhold upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(b) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(c) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

SEC. 169. Section 43524 of the Revenue and Taxation Code is amended to read:

43524. Exemptions from levy under Chapter 4 (commencing

with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

SEC. 170. Section 45862 of the Revenue and Taxation Code is amended to read:

45862. The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with fee payers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

SEC. 171. Section 45868 of the Revenue and Taxation Code is amended to read:

45868. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event of any of the following:

(1) The expense of the sale process exceeds the liability for which the levy is made.

(2) The Taxpayers' Rights Advocate orders the release of the levy or notice to withhold upon his or her finding that the levy or notice to withhold threatens the health or welfare of the fee payer or his or her spouse and dependents or family.

(b) The board shall not sell any seized property until it has first notified the fee payer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(c) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

SEC. 172. Section 45869 of the Revenue and Taxation Code is amended to read:

45869. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

SEC. 173. Section 45870 of the Revenue and Taxation Code is amended to read:

45870. (a) A fee payer may file a claim with the board for reimbursement of bank charges incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank charges include a financial institution's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the fee payer and not waived for reimbursement by the financial institution. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by

the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the fee payer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the fee payer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the fee payer shall be notified in writing of the reason or reasons for the denial of the claim.

SEC. 174. Section 45871 of the Revenue and Taxation Code is amended to read:

45871. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the fee payer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the fee payer to prevent the filing or recording of the lien. In the event fee liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not be required with respect to jeopardy determinations issued under Article 4 (commencing with Section 45351) of Chapter 3.

(c) If the board determines that the filing of a lien was in error, it shall mail a release to the fee payer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the fee payer and the entity recording the lien.

(d) When the board releases a lien that has been erroneously filed, notice of that release shall be mailed to the fee payer and, upon the request of the fee payer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

SEC. 175. Section 46153 of the Revenue and Taxation Code is amended to read:

46153. (a) The board, for good cause, may extend, for a period not to exceed one month, the time for making any return or paying any amount required to be paid under this part. The extension may be granted at any time if a request for the extension is filed with the board within or prior to the period for which the extension may be

granted.

(b) Any person to whom an extension is granted shall pay, in addition to the fee, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5 from the date on which the fee would have been due without the extension until the date of payment.

SEC. 176. Section 50156.2 of the Revenue and Taxation Code is amended to read:

50156.2. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

(1) Fee payers newly registered with the board.

(2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered fee payers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of fee payer educational materials currently produced by the board that explain the most common areas of fee payer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit personnel to include the application of new legislation to fee payer activities, and areas of recurrent fee payer noncompliance or inconsistency of administration.

(c) Electronic media used to comply with this section shall not represent the voice, picture, or name of members of the board or the Controller.

SEC. 177. Section 50156.10 of the Revenue and Taxation Code is amended to read:

50156.10. (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations that include underground storage tank fee violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

SEC. 178. Section 50156.12 of the Revenue and Taxation Code is amended to read:

50156.12. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event of any of the following:

(1) The expense of the sale process exceeds the liability for which the levy is made.

(2) The Taxpayers' Rights Advocate orders the release of the levy or notice to withhold upon his or her finding that the levy or notice to withhold threatens the health or welfare of the fee payer or his or her spouse and dependents or family.

(b) The board shall not sell any seized property until it has first notified the fee payer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(c) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

SEC. 179. Section 50156.13 of the Revenue and Taxation Code is amended to read:

50156.13. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

SEC. 180. Section 50156.15 of the Revenue and Taxation Code is amended to read:

50156.15. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the fee payer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the fee payer to prevent the filing or recording of the lien. In the event fee liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not be required with respect to jeopardy determinations issued under Article 4 (commencing with Section 50120.1) of Chapter 3.

(c) If the board determines that the filing of a lien was in error, it shall mail a release to the fee payer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall

immediately issue a release of lien to the fee payer and the entity recording the lien.

(d) When the board releases a lien that has been erroneously filed, notice of that release shall be mailed to the fee payer and, upon the request of the fee payer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

SEC. 181. Section 50156.16 of the Revenue and Taxation Code is amended to read:

50156.16. (a) If any officer or employee of the board recklessly disregards board-published procedures, a fee payer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars ($75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff that contributed to the damages.

(d) Whenever it appears to the court that the fee payer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars ($10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

SEC. 182. Section 30158 of the Streets and Highways Code is amended to read:

30158. The department may issue permits for the use of any toll bridge or other toll highway crossing acquired or constructed pursuant to this chapter on a credit basis. Except in the case of

municipal or other public corporations, governmental agencies, or common carriers having contracts directly with the commission for the operation of the transportation facilities of the bridge or crossing, and except as provided in Section 30161.5, the department shall require the holder of a permit for the use of any toll bridge or other toll highway crossing on a credit basis to furnish and maintain in force a bond executed by an admitted surety insurer, approved by the department, in an amount equal to twice the department's estimate of the toll charges to be incurred under the permit during one month.

SEC. 183. Section 30161 of the Streets and Highways Code, as added by Chapter 64 of the Statutes of 1990, is amended and renumbered to read:

30161.5. (a) For any bridge at which an automatic vehicle identification system, as described in this section, has been installed and is in operation, the department may waive the requirement that the holder of a credit permit furnish and maintain a surety bond. The automatic vehicle identification system shall have the capability of identifying each vehicle operating under the permit and of tabulating the number of bridge crossings by those vehicles. This section does not affect the authority of the department under Section 30796.8.

(b) The department shall notify the Legislature of the date upon which it commences operation of the system described in subdivision (a) on any bridge other than the bridge described in Section 30796.

(c) This section shall become inoperative five years from the date specified by the department pursuant to subdivision (b), and as of January 1 next following that date is repealed, unless a later enacted statute, which becomes effective on or before that January 1, deletes or extends that date.

(d) Nine months prior to the end of the five-year period specified in subdivision (c), the department shall submit a report to the Legislature on the implementation of subdivision (a). The report shall include an analysis of credit delinquencies encountered in operating the system and the administrative costs incurred in debt collection.

SEC. 184. Section 10205 of the Unemployment Insurance Code is amended to read:

10205. The panel shall do all of the following:

(a) Establish and update an annual plan, based on the demand of employers for trained workers, changes in the state's economy and labor markets, and continuous reviews of the effectiveness of panel training contracts. The plan shall be submitted to the Governor and the Legislature. In carrying out this section, the panel shall review information in the following areas:

(1) Labor market information, including the state-local labor market information program in the Employment Development Department, and economic forecasts.

(2) Evaluations of the effectiveness of training as measured by

increased security of employment for workers and benefits to the California economy.

(3) The demand for training by industry, type of training, and size of employer.

(4) Changes in skills necessary to perform jobs, including changes in basic literacy skills.

(5) Evaluations of the effectiveness of training previously funded by the panel in improving security of employment for workers and benefiting the California economy. As part of these evaluations, the panel shall compare the wages of trainees in the year before training and in the year after training as reflected in the department's unemployment insurance tax records, and shall evaluate the effect of previous training projects on the productivity of participating firms and on the economy of the state.

(6) Changes in the demographics of the labor force and the population entering the labor market.

(7) Proposed expenditures by other agencies of federal Job Training Partnership Act funds and other state and federal training and vocational education funds on eligible participants.

(b) Submit its first annual plan by July 1, 1990. The panel shall maintain a system to continuously monitor economic and other data required under this plan. If this data changes significantly during the life of the plan, the plan shall be amended by the panel. Each plan shall include all of the following:

(1) The panel's objectives with respect to the distribution of funds between new-hire training and retraining.

(2) The identification of specific industries, production and quality control techniques, and regions of the state where employment training funds would most benefit the state's economy and plans to encourage training in these areas, including specific standards and a system for expedited review of proposals which meet the standards.

(3) A system for expedited review of proposals which are substantially similar with respect to employer needs, training curriculum, duration of training, and costs of training, in order to encourage the development of proposals which meet the needs identified in paragraph (2).

(4) The panel's goals and operational objectives with respect to meeting the needs of small employers.

(5) Standards of accountability for retraining contracts that will be used in addition to the standards set forth in subdivision (f) of Section 10209 and elsewhere in this chapter. The additional standards shall provide that all payments not be considered earned until a showing by the contractor has been made that the training has resulted in measurable productivity or other improvements that result in a net benefit to the California economy. The method to be used for assessing the productivity or other improvements attributable to the training shall be specified in the contract. The standards shall be phased in beginning January 1, 1991, with repeat

contracts and larger contracts, and by no later than July 1, 1992, shall be in use in all retraining contracts.

(6) The research objectives of the panel that contribute to the effectiveness of this chapter in benefiting the economy of the state as a whole.

(7) A priority list of skills that are in such short supply that employers are choosing to not locate or expand their businesses in the state or are importing labor in response to these skills shortages. This list should identify those industries in which upgrade training is likely to encourage hiring of the unemployed on a backfill basis.

(c) Solicit proposals and write contracts on the basis of proposals made directly to it and on the basis of the recommendations of the local review panels. Contracts for the purpose of providing employment training may be written with any of the following:

(1) An employer or group of employers.

(2) A training agency.

(3) A private industry council with the approval of the appropriate local elected officials in the service delivery area.

(4) A grant recipient or administrative entity selected pursuant to Section 103 of the Federal Job Training Partnership Act and Section 15021, with the approval of the local private industry council and the appropriate local elected officials.

These contracts shall be in the form of fixed-fee performance contracts. Notwithstanding any provision of law to the contrary, contracts entered into pursuant to this chapter shall not be subject to competitive bidding procedures. However, the panel shall set contracting objectives with respect to minority- and woman-owned businesses that are substantially similar to those required by Chapter 6 (commencing with Section 16850) of Part 3 of Division 4 of Title 2 of the Government Code, Section 10108.5 of the Public Contract Code, and Article 1.5 (commencing with Section 10115) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code. No trainee shall receive employment training under this chapter for a period of more than 18 months. Contracts for training may be written for a period not to exceed 24 months for the purpose of administration by the panel and the contracting employer or any group of employers acting jointly or any training agency for the purpose of providing employment training.

(d) Allocate the Employment Training Fund. In doing so, the panel shall seek to facilitate the employment of the maximum number of eligible participants in jobs with definite career potential and long-term job security, and to provide retraining to existing workers whose skills are outmoded due to changes in technology or the need to increase productivity. In no case shall the statewide allocation be based solely on population. In funding contracts, the panel shall give priority to proposals in the following order, except that within each priority category, proposals jointly developed by business management and worker representatives shall be given special consideration:

(1) New-hire training and retraining for workers who have received notification of actual layoff.

(2) Retraining of eligible participants employed at the start of training by small businesses.

(3) Retraining for workers whose jobs are threatened by increased competition from outside the state.

(4) All other proposals.

Nothing in this chapter shall be construed to require the panel to set aside funds based on the priorities established in this subdivision, or to preclude the panel from entering into contracts for the provision of training in multijurisdictional areas of the state. In making determinations under this section, the panel shall give special consideration to proposals for training for new employees of firms locating or expanding in California, to new hire and retraining for firms located in enterprise zones and economic incentive areas designated by the Department of Commerce, and to training for veterans, and to training which supports approved apprenticeship programs. The panel shall provide technical assistance to encourage the development of these proposals.

(e) Establish minimum standards for the consideration of proposals, which shall include, but not be limited to, the identification of employers who have been contacted by the contractor and who have provided reasonable assurance that they will employ successful trainees, the number of jobs available, the skill requirements for the identified jobs, the projected cost per person trained, hired, and retained in employment, the wages paid successful trainees upon placement, and the curriculum for the training. No proposal shall be considered or approved which proposes training for employment covered by a collective bargaining agreement unless the signatory labor organization agrees in writing.

(f) Ensure the provision of adequate fiscal and accounting controls for, monitoring and auditing of, and other appropriate technical and administrative assistance to, projects funded by this chapter.

(g) Provide for evaluation of projects funded by this chapter. Individual project evaluations shall contain a summary description of the project, the number of persons entering training, the number of persons completing training, the number of persons employed at the end of the project, the number of persons still employed three months after the end of the project, the wages paid, the total costs of the project, and the total reimbursement received from the Employment Training Fund.

(h) Report annually to the Legislature, by November 30, on projects operating during the previous state fiscal year. These annual reports shall provide separate summaries of all of the following:

(1) Projects completed during the year, including their individual and aggregate performance and cost.

(2) Projects not completed during the year, briefly describing each project and identifying approved contract amounts by contract

and for this category as a whole, and identifying any projects in which funds are expected to be disencumbered.

(3) Projects terminated prior to completion and the reasons for the termination.

(4) A full report of all training provided to participants who qualified pursuant to paragraph (3) of subdivision (b) of Section 10201.

(5) A description of the amount, type, and effectiveness of literacy training funded by the panel.

In addition, based upon its experience in administering job training projects, the panel shall include in these reports policy recommendations concerning the impact of job training and the panel's program on economic development, labor-management relations, employment security, and other related issues. To assist in the preparation of the policy recommendations, the chair of the panel may appoint an advisory research council.

(i) Expedite the processing of contracts for firms considering locating or expanding businesses in the state, as determined by the Department of Commerce.

(j) Coordinate and consult regularly with business groups and labor organizations, the State Job Training Coordinating Council, the State Department of Education, the office of the Chancellor of the California Community Colleges, the Employment Development Department, and the Department of Commerce.

(k) Adopt by regulation procedures for the conduct of panel business, including the scheduling and conduct of meetings, the review of proposals, the disclosure of contacts between panel members and parties at interest concerning particular proposals, contracts or cases before the panel or its staff, the awarding of contracts, the administration of contracts, and the payment of amounts due to contractors. All decisions by the panel shall be made by resolution of the panel and any adverse decision shall include a statement of the reason for the decision.

(*l*) Adopt regulations and procedures providing reasonable confidentiality for the proprietary information of employers seeking training funds from the panel if the public disclosure of that information would result in an unfair competitive disadvantage to the employer supplying the information. In no case shall the panel withhold information from the public regarding its operations, procedures, and decisions which would otherwise be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(m) Review and comment on the budget and performance of any program, project, or activity utilizing funds collected pursuant to Section 976.6.

SEC. 185. Section 14601.5 of the Vehicle Code is amended to read:

14601.5. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked

pursuant to Section 13353 or 13353.2 and that person has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, no person shall drive a motor vehicle at any time when that person's driving privilege is restricted pursuant to Section 13353.6 or 13353.7 and that person has knowledge of the restriction.

(c) Knowledge of suspension, revocation, or restriction of the driving privilege shall be presumed if notice has been given by the department to the person. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) Any person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not more than six months or by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(2) If the offense occurred within five years of a prior offense that resulted in a conviction for a violation of this section, Section 14601, or Section 14601.2, by imprisonment in the county jail for not less than 10 days or more than one year, and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000).

(e) The court, upon a showing of good cause, may waive the mandatory minimum imprisonment period required by paragraph (2) of subdivision (d). The court shall state its reasons for waiving that requirement on the record at the time of sentencing.

(f) In imposing the minimum fine required by subdivision (d), the court shall take into consideration the defendant's ability to pay the fine and may, in the interest of justice, and for reasons stated in the record, reduce the amount of that minimum fine to less than the amount otherwise imposed.

(g) Nothing in this section prohibits a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle that is owned or utilized by the person's employer, during the course of employment on private property that is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (d) of Section 12500.

(h) Nothing in this section prohibits a person with a suspended license from driving a motor vehicle when emergency medical service is needed immediately.

SEC. 186. Section 22454 of the Vehicle Code is amended to read:

22454. (a) The driver of any vehicle, upon meeting or overtaking, from either direction, any schoolbus equipped with signs as required in this code, that is stopped for the purpose of loading or unloading any schoolchildren and displays a flashing red light signal and stop signal arm, as defined in paragraph (4) of subdivision (b) of Section 25257, if equipped with a stop signal arm, visible from front or rear, shall bring the vehicle to a stop immediately before passing the schoolbus and shall not proceed past the schoolbus until the flashing red light signal and stop signal arm, if equipped with a stop

signal arm, cease operation.

(b) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a schoolbus which is upon the other roadway. The driver of a vehicle need not stop upon meeting or passing a schoolbus when the schoolbus is stopped at an intersection where traffic is controlled by a traffic officer or official traffic control signal, or when the schoolbus is stopped at a place where traffic is controlled by a traffic officer or official traffic control signal.

(c) (1) If a vehicle was observed overtaking a schoolbus in violation of subdivision (a), and the driver of the schoolbus witnessed the violation, the driver may, within 24 hours, report the violation and furnish the vehicle license plate number and description and the time and place of the violation to the local law enforcement agency having jurisdiction of the offense. That law enforcement agency shall issue a letter of warning prepared in accordance with paragraph (2) with respect to the alleged violation to the registered owner of the vehicle. The issuance of a warning letter under this paragraph shall not be entered on the driving record of the person to whom it is issued, but does not preclude the imposition of any other applicable penalty.

(2) The Attorney General shall prepare and furnish to every law enforcement agency in the state a form letter for purposes of paragraph (1), and the law enforcement agency may issue those letters in the exact form prepared by the Attorney General. The Attorney General may charge a fee to any law enforcement agency that requests a copy of the form letter to recover the costs of preparing and providing that copy.

(d) This section also applies to a roadway upon private property.

SEC. 187. Section 22661 of the Vehicle Code is amended to read:

22661. Any ordinance establishing procedures for the removal of abandoned vehicles shall contain all of the following provisions:

(a) The requirement that notice be given to the Department of Motor Vehicles within five days after the date of removal, identifying the vehicle or part thereof and any evidence of registration available, including, but not limited to, the registration card, certificates of ownership, or license plates.

(b) Making the ordinance inapplicable to (1) a vehicle or part thereof that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property or (2) a vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer, or a junkyard. This exception shall not, however, authorize the maintenance of a public or private nuisance as defined under provisions of law other than this chapter.

(c) The requirement that not less than a 10-day notice of intention to abate and remove the vehicle or part thereof as a public nuisance be issued, unless the property owner and the owner of the vehicle

have signed releases authorizing removal and waiving further interest in the vehicle or part thereof. However, the notice of intention is not required for removal of a vehicle or part thereof that is inoperable due to the absence of a motor, transmission, or wheels and incapable of being towed, is valued at less than two hundred dollars ($200) by a person specified in Section 22855, and is determined by the local agency to be a public nuisance presenting an immediate threat to public health or safety, provided that the property owner has signed a release authorizing removal and waiving further interest in the vehicle or part thereof. Prior to final disposition under Section 22662 of such a low-valued vehicle or part for which evidence of registration was recovered pursuant to subdivision (a), the local agency shall provide notice to the registered and legal owners of intent to dispose of the vehicle or part, and if the vehicle or part is not claimed and removed within 12 days after the notice is mailed, from a location specified in Section 22662, final disposition may proceed. No local agency or contractor thereof shall be liable for damage caused to a vehicle or part thereof by removal pursuant to this section.

This subdivision applies only to inoperable vehicles located upon a parcel that is (1) zoned for agricultural use or (2) not improved with a residential structure containing one or more dwelling units.

(d) The 10-day notice of intention to abate and remove a vehicle or part thereof, when required by this section, shall contain a statement of the hearing rights of the owner of the property on which the vehicle is located and of the owner of the vehicle. The statement shall include notice to the property owner that he or she may appear in person at a hearing or may submit a sworn written statement denying responsibility for the presence of the vehicle on the land, with his or her reasons for such denial, in lieu of appearing. The notice of intention to abate shall be mailed, by registered or certified mail, to the owner of the land as shown on the last equalized assessment roll and to the last registered and legal owners of record unless the vehicle is in such condition that identification numbers are not available to determine ownership.

(e) The requirement that a public hearing be held before the governing body of the city, county, or city and county, or any other board, commissioner, or official of the city, county, or city and county as designated by the governing body, upon request for such a hearing by the owner of the vehicle or the owner of the land on which the vehicle is located. This request shall be made to the appropriate public body, agency, or officer within 10 days after the mailing of notice of intention to abate and remove the vehicle or at the time of signing a release pursuant to subdivision (c). If the owner of the land on which the vehicle is located submits a sworn written statement denying responsibility for the presence of the vehicle on his or her land within that time period, this statement shall be construed as a request for hearing that does not require the presence of the owner submitting the request. If the request is not received

within that period, the appropriate public body, agency, or officer shall have the authority to remove the vehicle.

(f) The requirement that after a vehicle has been removed, it shall not be reconstructed or made operable, unless it is a vehicle that qualifies for either horseless carriage license plates or historical vehicle license plates, pursuant to Section 5004, in which case the vehicle may be reconstructed or made operable.

(g) A provision authorizing the owner of the land on which the vehicle is located to appear in person at the hearing or present a sworn written statement denying responsibility for the presence of the vehicle on the land, with his or her reasons for the denial. If it is determined at the hearing that the vehicle was placed on the land without the consent of the landowner and that he or she has not subsequently acquiesced to its presence, then the local authority shall not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect those costs from the owner.

SEC. 188. Section 1745.05 of the Water Code is amended to read:

1745.05. (a) Water stored by the water supplier and water made available from either of the following sources may be transferred by the water supplier pursuant to Section 1745.04:

(1) Conservation or alternate water supply measures taken by individual water users or by the water supplier.

(2) Water developed pursuant to a contract by a water user to reduce water use below the user's allocation or to eliminate the use of water during the water year, including a contract to grow crops without the use of water from the water supplier, to fallow land, or to undertake other action to reduce or eliminate water use.

(b) The amount of water made available by land fallowing may not exceed 20 percent of the water that would have been applied or stored by the water supplier in the absence of any contract entered into pursuant to this article in any given hydrological year, unless the agency approves, following reasonable notice and a public hearing, a larger percentage.

SEC. 189. Section 10631 of the Water Code is amended to read:

10631. A plan shall do all of the following:

(a) Include an estimate of past, current, and projected potable and reclaimed water use and, to the extent records are available, segregate those uses between residential, industrial, commercial, and governmental uses.

(b) Identify conservation and reclamation measures currently adopted and being practiced.

(c) Describe alternative conservation measures, including, but not limited to, consumer education, metering, water saving fixtures and appliances, pool covers, lawn and garden irrigation techniques, and low water use landscaping, which would improve the efficiency of water use with an evaluation of their costs and their environmental and other significant impacts.

(d) Provide a schedule of implementation for proposed actions as

indicated by the plan.

(e) Describe the frequency and magnitude of supply deficiencies, based on available historic data and future projected conditions comparing water supply and demand, including a description of deficiencies in time of drought and emergency and the ability to meet deficiencies.

(f) To the extent feasible, describe the method which will be used to evaluate the effectiveness of each conservation and reclamation measure implemented under the plan.

(g) Describe the steps which would be necessary to implement any proposed actions in the plan.

(h) Describe findings, actions, and planning relating to all of the following:

(1) The use of internal and external water audits for single-family residential, multifamily residential, institutional, commercial, industrial, and governmental customers, and the use of incentive programs to encourage customer audits and program participation.

(2) The use of distribution system water audits.

(3) Leak detection and repair.

(4) The use of large landscape water audits and incentives for conversion to water reuse.

(5) Methods to increase the use of reclaimed water in areas in which the use of potable water is not required.

(i) Describe financial incentives used to encourage the use of reclaimed water and the results of these actions in terms of acre-feet per year used.

(j) Describe water reclamation measures for agricultural irrigation, landscape irrigation, wildlife habitat enhancement, wetlands, industrial reuse, groundwater recharge, and other appropriate uses.

(k) Identify actions and incentives to facilitate the development of dual water systems for the use of reclaimed water in new construction, for flushing toilets and urinals, landscaping, golf courses, cemeteries, irrigation, and other appropriate purposes.

(*l*) Describe actions and planning to eliminate the use of once-through cooling systems, nonrecirculating water systems, and nonrecycling decorative water fountains, and to encourage the recirculation of water if proper public health and safety standards are maintained.

(m) Describe actions and plans to enforce conservation and reclamation measures.

(n) To the extent feasible, describe the amount of water saved through water conservation and reclamation measures employed by user groups.

SEC. 190. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the

hearing of the date of the future hearing, of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the probation officer to the same persons as in the original proceeding, to the minor's parent or guardian, to the foster parents, community care facility, or foster family agency having physical custody of the minor in the case of a minor removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the minor being recommended by the supervising agency. The notice to the foster parent shall indicate that the foster parent may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the probation officer shall file a supplemental report with the court regarding the services provided or offered to the parents to enable them to assume custody, the progress made, and, where relevant, the prognosis for return of the minor to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the minor to a parent, the report shall specify why the return of the minor would be detrimental to the minor. The probation officer shall provide the parent or parents with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a minor removed from the physical custody of his or her parent or guardian, the probation officer shall provide a summary of his or her recommendation for disposition to the counsel for the minor, any court appointed child advocate, foster parents, community care facility, or foster family agency having the physical custody of the minor at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a minor in the physical custody of a community care facility or foster family agency that may result in the return of the minor to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to such a hearing involving a minor in the physical custody of a foster parent, the foster parent may file with the court a report containing its recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any

disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parents or guardians unless, by a preponderance of the evidence, it finds that the return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that return would be detrimental. In making its determination, the court shall review the probation officer's report, shall review and consider the report and recommendations of any child advocate appointed pursuant to Section 356.5, and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided; shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the minor to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the minor was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the minor had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian, provided that the court may modify the terms and conditions of those services. If the child is not returned to his or her parent or parents, the court shall determine whether reasonable services have been provided or offered to the parent or parents that were designed to aid the parent or parents to overcome the problems that led to the initial removal and the continued custody of the minor. The court shall order that those services be initiated or continued.

(f) At the review hearing held 12 months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parent or guardian unless, by a preponderance of the evidence, it finds that return of the child would create a substantial risk or detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or parents which were designed to aid the parent or parents to overcome the problems which led to the initial removal and continued custody of the minor. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that return would be detrimental. In making its determination, the court shall review the probation officer's report and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided. If the minor is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If a minor is not returned to the custody of a parent or guardian at the hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for another review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within six months or that reasonable services have not been provided to the parent or parents. The court shall inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a permanent plan shall be developed at that hearing. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

(2) Order that the minor remain in long-term foster care, if the court finds by clear and convincing evidence, based upon the evidence already presented to it, that the minor is not adoptable and has no one willing to accept legal guardianship.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor pending the hearing unless it finds that visitation would be detrimental to the minor.

(i) Whenever a court orders that a hearing pursuant to Section

366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor, if the minor is 10 years of age or older, concerning placement and the adoption or guardianship.

(6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

(j) This section shall apply to minors made dependents of the court pursuant to subdivision (c) of Section 360 on or after January 1, 1989.

SEC. 191. Section 729.8 of the Welfare and Institutions Code is amended to read:

729.8. (a) If a minor is found to be a person described in Section 602 by reason of the unlawful possession, use, sale, or other furnishing of a controlled substance as defined in Chapter 2 (commencing with Section 11053) of the Health and Safety Code, an imitation controlled substance as defined in Section 11675 of the Health and Safety Code, or toluene or a toxic as described in Section 381 of the Penal Code, upon the grounds of any school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any church or synagogue, playground, public or private youth center, or public swimming pool, during hours in which these facilities are open for business, classes, or school-related activities or programs, or at any time when minors are using the facility, the court, as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, shall require the minor to perform not more than 100 hours of community service.

(b) The definitions contained in subdivision (e) of Section 11351.1 shall apply to this section.

(c) As used in this section, "community service" means any of the following:

(1) Picking up litter along public streets or highways.
(2) Cleaning up graffiti on school grounds or any public property.
(3) Performing services in a drug rehabilitation center.

SEC. 192. Section 731.6 of the Welfare and Institutions Code is amended to read:

731.6. (a) The Legislature hereby finds and declares the following:

There is a desire to develop and implement innovative and cost-effective options that will alleviate crowding within the institutions operated by the Department of the Youth Authority, that will increase the department's substance abuse treatment capability, that will improve ward performance after release to parole, and that will prevent the further incursion of youthful offenders into the criminal justice system.

(b) The Legislature, therefore, intends to establish a pilot program within the Department of the Youth Authority to test and evaluate innovative and cost-effective sentencing options; to instill discipline, responsibility, and self-esteem among the youth admitted to the program; and to facilitate the successful return of these youth to law-abiding and productive participation in their home communities.

(c) There shall be within the Department of the Youth Authority an intensive correctional program for minors adjudged wards of the juvenile court on the grounds that they are persons described by Section 602. The program shall be known as the Leadership, Esteem, Ability, and Discipline (LEAD) program and shall be intended to promote leadership, esteem, ability, and discipline among wards who participate. The program shall be implemented as a treatment continuum consisting of a short-term and highly structured institutional component followed by an intensive parole experience component. The institutional component shall not exceed four months from the time the ward enters into the LEAD program until the time the ward is released to parole, except as provided in subdivision (g). The institutional component shall be based on a military training model and shall include such discipline, educational, and vocational training, substance abuse prevention, esteem-building, and other activities as may be deemed appropriate and effective by the department. The last month of the institutional component shall include a special emphasis on preparole and transitional needs of wards, emphasizing public service, personal accountability, employability, and good citizenship. The intensive parole experience shall consist of six months of enriched parole services designed to facilitate the successful return of the ward to society. As used in this section, "enriched parole services" means that parole agents assigned to the LEAD program shall have caseloads of not more than 15 parolees per agent. The intensive parole component of the LEAD program shall consist of services and strategies deemed appropriate and effective by the department, including, but not limited to, substance abuse prevention support

services, individual and group counseling, family support services, drug testing, electronic monitoring, job training and job placement services, and the development of linkages to community-based agencies and services that can assist the ward in making a successful readjustment. The intensive parole phase of the LEAD program shall include a relapse-management strategy designed to focus intensive services upon wards who are at risk of failing on parole, and this relapse-management may include specialized, short-term residential, and noninstitutional placement for parolees who need a temporary and structured environment in order to succeed on parole. Upon the successful completion of six months of intensive parole, LEAD participants may be transferred to the regular parole caseload of the Department of the Youth Authority for six months and shall be subject to general provisions of parole in order to receive continued supervision and parole services at less intensive levels.

(d) The LEAD program shall be implemented as a 60-bed pilot program at a northern California facility to be designated by the Department of the Youth Authority, and shall begin enrolling wards on or before September 30, 1992. The second phase shall consist of a 60-bed program at a southern California facility to be designated by the Department of the Youth Authority and shall begin enrolling wards during the 1993 calendar year, unless one of the following events occur:

(1) The LEAD program is ended by the Department of the Youth Authority on the basis of an operational failure, such as a chronic insufficiency of wards meeting the eligibility requirements of subdivision (a) of Section 731.7.

(2) There is an insufficient number of wards meeting the eligibility requirements of subdivision (a) of Section 731.7 to sustain at least a 40-bed program in southern California.

(3) Insufficient funds are available to implement the southern California expansion of the LEAD program.

If the Department of the Youth Authority determines, based on one or more of these events, that it cannot add an additional LEAD program to serve southern California wards, it shall make a written report to the Legislature of its decision not to proceed with the second phase of the LEAD program and of its reasons for making the decision not to proceed.

The Department of the Youth Authority may, at any time and in its discretion, increase LEAD program capacity at either the northern or southern California facility if resources are available to support the increase.

(e) Wards who participate in the LEAD program shall, to the extent practical, be separated while institutionalized from wards who are not enrolled in the LEAD program.

(f) The Department of the Youth Authority shall, in its design, staffing, and implementation of the institutional component of the LEAD program, take steps to ensure that the disciplinary and esteem-building activities do not involve the corporal punishment of

wards or the application of training methods which are personally degrading, humiliating, or inhumane.

(g) In exceptional cases, a ward may be retained in the institutional component of the LEAD program for up to 30 additional days if additional time is needed, in the opinion of the department, to allow the ward to complete the program successfully after illness or some other unforeseen circumstance that may delay the ward's normal progress and timely release to parole. If a ward's release to parole is delayed beyond the normal four-month institutional stay, the department shall maintain documentation in the ward's file regarding the need for and the length of any additional time spent in the institutional component of the program.

(h) This section shall be repealed on June 30, 1997, unless that date is extended or deleted by a later enacted statute.

SEC. 193. Section 827 of the Welfare and Institutions Code is amended to read:

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

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

(b) (1) While the Legislature reaffirms its belief that juvenile

court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality in cases involving serious acts of violence. Further, it is the intent of the Legislature that even in these selected cases dissemination of juvenile court records be as limited as possible, consistent with the need to work with a pupil in an appropriate fashion, and the need to protect potentially vulnerable school staff and other pupils over whom school staff exercise direct supervision and responsibility.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school in kindergarten or any of grades 1 to 12, inclusive, has been found by a court of competent jurisdiction to have used, sold, or possessed narcotics or a controlled substance or to have committed any crime listed in paragraphs (1) to (15), inclusive, or (17) to (19), inclusive, of subdivision (b) of Section 707 shall be provided by the court, within seven days, to the superintendent of the school district of attendance. This information shall be expeditiously transmitted to any teacher, counselor, or administrator with direct supervisorial or disciplinary responsibility over the minor who the superintendent or his or her designee, after consultation with the principal at the school of attendance, believes needs this information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability. Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher, counselor, or administrator. An intentional violation of the confidentiality provisions of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

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

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

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Destroy This Record 12 Months

After The Minor Returns To Public School. Unlawful Dissemination of This Information Is A Misdemeanor." No information transmitted by the superintendent pursuant to subdivision (b) shall be transmitted by the superintendent or by any teacher, counselor, or administrator to any other person more than 12 months after receipt of the original notice from the court or more than 12 months after the minor returns to public school, whichever occurs last. Any information received from the court shall be destroyed by school authorities 12 months after its receipt from the court or 12 months after the minor returns to public school, whichever occurs last. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred and shall specify the date by which the record will be destroyed.

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

SEC. 194. Section 4342 of the Welfare and Institutions Code is amended to read:

4342. (a) The five-year Suicide Intervention Skills Training Program established by the department shall develop all of the following:

(1) Research and data collection on suicide.

(2) Public education material for production and distribution in conjunction with other public agencies and the private sector throughout the state.

(3) Training programs involving students, parents, teachers, school administrators, mental health professionals, local social service agencies, juvenile justice representatives, and others concerned with the problem of suicide.

(b) Upon request of the Legislature, the department shall provide data and a summary of accomplishments of this program, and recommendations to reduce the incidence of suicide.

(c) The development of these components shall include clear evidence of cultural competence. Cultural competence is defined for these purposes as a set of congruent behaviors, attitudes, and policies that come together in a system or agency, or among professionals, that allows the system, agency, or professionals to work effectively in cross-cultural situations.

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

is enacted before January 1, 1994, deletes or extends that date.

SEC. 195. Section 5856 of Article 2 (commencing with Section 5852) of Chapter 1 of Part 4 of Division 5 of the Welfare and Institutions Code is amended and renumbered to read:

5855.5. Projects funded pursuant to Part 4 (commencing with Section 5850) of Division 5, as added by Chapter 89 of the Statutes of 1991, shall continue under the terms of this part. The State Department of Mental Health shall, no later than June 30, 1993, amend existing contracts for these projects to reflect the requirements of this part.

SEC. 196. Section 5857 of the Welfare and Institutions Code is amended to read:

5857. (a) The State Department of Mental Health shall issue a request for proposals to counties no later than February 1 of each year.

(b) Proposals shall be submitted to the department by a county mental health department no later than July 1 of that year with joint approval of collaborating local agencies including, but not limited to, special education, juvenile court, and child protective services agencies, as well as the board of supervisors and the mental health advisory board.

(c) Program staff from the department shall review and approve all proposals for compliance with all requirements of law and request for proposals guidelines.

(d) The department may accept letters of intent from a county in lieu of a proposal if moneys are not available to the county, to affirm commitment by the county to participate in the request for proposals process when moneys become available.

SEC. 197. Section 11325.2 of the Welfare and Institutions Code is amended to read:

11325.2. (a) At the time an individual registers pursuant to this article, including persons who volunteer to participate, or with respect to any individual described in Section 11325, at the time the situation that permits nonparticipation no longer exists, every individual shall enter into a written basic contract with the county welfare department.

(b) The county shall offer the participant three days in which to consider and evaluate the proposed terms of the contract, or any subsequent amendments to the contract.

(c) The contract shall comply with all of the following criteria:

(1) The contract shall be written in clear and understandable language, and have a simple and easy-to-read format. The contract shall contain at least all of the following general information:

(A) A general description of the program provided for in this article.

(B) A detailed description of the services, including supportive services such as child care and transportation, available to program participants and the hours the participant is required to attend training, education, or work experience.

(C) A description of the rights, duties and responsibilities of program participants, including a list of the exemptions from required participation under this article and the consequences of a refusal to participate in program components.

(2) In the case of any participant who has not been employed within two years from the date of registration, except for a participant described in paragraph (4), the contract shall provide that the participant shall participate in job club for a period of three weeks, as defined in Section 11322.6. Participation pursuant to this paragraph may be delayed in accordance with paragraph (5) or (6).

(3) In the case of any participant who has been employed within two years of the date of registration, except for a participant described in paragraph (4), the participant shall have the option to participate in a three-week period of job club, as defined in Section 11322.6, or in a three-week period of supervised job search, as defined in that section. At the discretion of the employment and training counselor and with the approval of the first or second line supervisor, the job search period may be shortened when it is determined that all reasonable job search efforts have been exhausted. The participant shall choose one of the options upon signing the contract. Participation pursuant to this paragraph may be delayed in accordance with paragraph (5) or (6).

(4) Notwithstanding paragraphs (2) and (3), in the case of any participant who has been a recipient of aid under this chapter more than twice within three years from the date of registration, the contract shall provide for immediate referral to assessment pursuant to Section 11325.4. Participation pursuant to this paragraph may be delayed in accordance with paragraph (5) or (6).

(5) (A) Any individual who is enrolled or attending in good standing in a self-initiated vocational training program or an educational program that likely will lead to unsubsidized employment in an occupation in demand may continue to participate in that program until completion of the program for a period not to exceed two years from the date the basic contract reflecting the self-initiated program is signed. The individual's program shall be scheduled to be completed within the two-year period. The two-year period may be extended, one time only, for a period of not more than six months, on an individual basis, for persons who are unable to complete a self-initiated program due to any of the following circumstances and who have a reasonable expectation to complete that program within the six-month period:

(i) The individual's basic skills requirements required more class time than was estimated at the commencement of that individual's self-initiated program.

(ii) The school or college did not offer required classes in a sequence that permitted completion of the self-initiated program within the prescribed time period.

(iii) The individual had a personal or family crisis that resulted in the inability of that individual to complete his or her self-initiated

program without an additional period of attendance, not to exceed six months.

(B) In order to continue in a self-initiated training or education program, a GAIN applicant or recipient shall need the education or training in order to become employable in unsubsidized employment. Any individual who meets either of the following criteria shall be deemed to be employable:

(i) The individual possesses a baccalaureate degree.

(ii) The individual has an education or job skills necessary to obtain unsubsidized employment in an occupation which is in demand that will provide the individual with an income equal to two times the federal poverty line for the appropriate family size. A county may waive this requirement if an individual is able to demonstrate that, due to compelling personal circumstances, employment in the previous occupation is not realistic, including, but not limited to, a work-related disability, inability to obtain required union membership, or hours of employment that cause a severe hardship on the recipient's family.

(C) (i) Supportive services reimbursement shall be limited to child care and transportation for any participant in a self-initiated training or education program approved under this subdivision. This reimbursement shall be provided if no other source of funding for those costs is available.

(ii) Any offset to supportive services payments shall be made in accordance with subdivision (d) of Section 11323.4.

(D) (i) In order to continue in a self-initiated training or education program, a GAIN participant shall be attending at least full time and shall make satisfactory progress, as periodically measured according to the standards of the program in which the individual is enrolled. If the individual is attending less than full time upon entry into GAIN but she or he agrees to full-time attendance as soon as possible, the individual shall be considered to be attending on a full-time basis.

(ii) A GAIN participant may participate on less than a full-time basis, but not less than on a half-time basis, if full-time participation is not feasible due to good cause, as defined in Section 11328.

(E) Participation in the self-initiated vocational or educational training program shall be reflected in the basic contract. The basic contract shall provide that whenever an individual ceases to participate in, or refuses to attend regularly, or does not maintain satisfactory progress in the self-initiated program, the individual shall participate in this program in accordance with paragraph (2), (3), or (4), whichever is applicable.

(F) Any person whose previously approved self-initiated education or training program is interrupted for reasons preventing participation may resume participation in the same program if the participant maintained good standing in the program while participating. The county shall adjust the completion date of the program accounting for the time of absence to allow the participant

a cumulative total of two years participation for completion of the program. In circumstances where the break in participation was for a period of more than one year, the participant may resume the program if the county determines the previously approved self-initiated education or training program meets all other criteria of this section at the time it is resumed.

(6) For those participants who lack basic literacy or mathematics skills, a high school diploma or its equivalent, or English language skills, the basic contract shall provide for either remedial education, instruction in order to obtain a general educational development certificate, or instruction in English-as-a-second-language. These participants shall be referred to appropriate service providers, including the educational programs operated by school districts or county offices of education that have contracted with the Superintendent of Public Instruction to provide services to participants pursuant to Section 33117.5 of the Education Code. The basic contract shall provide that when an individual, to whom this paragraph applies, fails, refuses, or ceases to comply with program requirements, without good cause, as specified in Section 11328, and conciliation efforts as specified in Section 11327.4 have failed to resolve the dispute, the individual shall be subject to the sanction provisions of Section 11327.5.

(7) (A) An individual to whom paragraph (6) applies who is either determined at appraisal or by the education provider to be unable to benefit from basic educational services due to a learning or medical problem, or is participating in the instruction and is determined not to be making satisfactory progress, shall be referred to a progress evaluation for a determination of whether the individual has the ability to successfully complete the assigned component. As part of the evaluation, counties may require an individual to take tests to obtain additional information regarding the student's learning abilities. This evaluation may result in referral, or rereferral as appropriate, to any of the following components:

(i) The person's previous activity.

(ii) Existing special programs that meet specific needs of the individual.

(iii) Job club, if the county determines the individual has the skills needed to find a job in the local labor market.

(iv) Assessment, followed by the appropriate postassessment activity.

(v) Rehabilitation assessment and subsequent training.

(B) The participant shall be involved in the decisions made during the progress evaluation and shall have appeal rights consistent with those accorded to individuals during an assessment made pursuant to subdivision (b) of Section 11325.4.

(C) It is the intent of the Legislature that the progress evaluations provide a method for determining the appropriate services needed by an individual for long-term success in the job market. It is also the intent of the Legislature that any individual who is determined to

need long periods of classroom instruction in order to achieve basic skills should not be referred to a progress evaluation if he or she is making steady, satisfactory progress in attaining the basic skill goal.

(8) (A) In the case of an individual who is an applicant for aid under this chapter and who is required to register pursuant to this article, mandated activities shall be limited to those necessary to enter into a written basic contract and to participation in job search.

(B) Any participant described in subparagraph (A) who is assessed as needing additional education and who chooses education in preference to job search as his or her first program component shall not be required to participate in job search until the county has approved the registrant for aid pursuant to this chapter.

SEC. 198. Section 14088.25 of the Welfare and Institutions Code is amended to read:

14088.25. (a) The department may conduct onsite reviews of a provider or facility that has agreed with the primary care case management contractor or a potential contractor to provide services to beneficiaries enrolled with the contractor. These reviews may be for purposes such as evaluating the capabilities of potential contractors, monitoring quality of care, investigating complaints, and ensuring contractor compliance with the terms of the contract entered into pursuant to this article.

(b) Prior to adding a provider or facility to an existing network of providers and facilities, the primary care case management contractor shall submit a complete prequalification package to the department. The department shall provide to the contractor written acknowledgment that the package is complete within 10 working days.

(c) (1) If the provider or facility proposed for addition to the contractor's existing network holds a valid and current Medi-Cal provider number, the provider or facility may begin treating beneficiaries enrolled with the contractor immediately upon the contractor's receipt of the acknowledgment required by subdivision (b), subject to paragraph (2) and subdivision (d).

(2) Whenever warranted, the department may rescind the privilege provided for in paragraph (1) by advance notification to the contractor, pending the onsite review required by subdivision (d). Notification shall be in writing and describe the conditions that support the rescission of the privilege.

(d) (1) The department shall conduct an onsite review of the provider or facility within a reasonable period of time after receipt of the package, which shall be not more than 60 days after receipt of the package, unless there are extenuating circumstances.

(2) The department shall notify the contractor in writing of the department's final decision on the request to add the provider or facility to the contractor's existing network within 10 working days of the date of the review.

(e) In the conduct of the onsite review of the provider or facility, the department shall not condition approval of the site on adherence

by the provider or facility to requirements that are not contained in any statute, regulation, or commonly accepted community standard of medical practice that directly applies to the category of provider or facility being inspected. This subdivision does not, however, relieve the contractor of any obligations under the contract entered into pursuant to this article.

SEC. 199. Section 14105.405 of the Welfare and Institutions Code is amended to read:

14105.405. (a) A Medi-Cal beneficiary, within 90 days of receipt of the director's notice to beneficiaries pursuant to subdivision (g) of Section 14105.33, informing them of the decision to delete or suspend a drug from the list of contract drugs, may request a fair hearing pursuant to Chapter 7 (commencing with Section 10950) of Part 2.

(b) Any beneficiary filing a fair hearing request regarding the deletion or suspension of a drug from the formulary shall be granted a treatment authorization request for that drug until a final decision is adopted by the director. Should the beneficiary seek judicial review of the director's decision, a treatment authorization request shall be granted for that drug until a final decision is issued by the court.

(c) (1) Any Medi-Cal beneficiary, within one year of the director's decision pursuant to Section 10959, may file a petition with the superior court, under the provisions of Section 1094.5 of the Code of Civil Procedure, praying for a review of both the legal and factual basis for the director's decision.

(2) The director shall be the sole respondent in these proceedings.

(d) Any Medi-Cal beneficiary injured as a result of being denied a drug which is determined to be medically necessary may sue for injunctive or declaratory relief to review the director's decision to delete or suspend a drug from the list of contract drugs.

(e) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 200. Section 16516 of the Welfare and Institutions Code is amended to read:

16516. (a) No social worker or probation officer acting as an officer of the court for purposes of this chapter shall, directly or indirectly, lobby for, act as a consultant to, enter into a business transaction with, acquire ownership of, or obtain a pecuniary interest in, any business, whether organized for profit or as a nonprofit entity, which has received any funds or income from court-ordered child welfare services.

(b) (1) Any public law enforcement agency or any private entity shall have standing to bring an action seeking a civil remedy pursuant to this section in any court of competent jurisdiction.

(2) Any person who violates this section shall be subject to any or all of the following remedies, as ordered by the court, in its discretion:

(A) Restitution of funds received in violation of this section.

(B) Statutory damages of not less than one thousand dollars ($1,000), not to exceed treble the amount of the funds received in violation of this section.

(C) Actual damages resulting from a violation of this section.

(D) Termination of the grant or contract.

(E) Reasonable attorney's fees.

(F) Any other relief which the court deems proper.

(c) "For purposes of this section, court-ordered child welfare services" include those services ordered by the court pursuant to Sections 11450 and 16501 for a dependent or ward of the court.

SEC. 201. Section 16812 of the Welfare and Institutions Code is amended to read:

16812. The State Department of Health Services, in consultation with the local jurisdictions, shall adopt any regulations necessary to implement this part. The department may adopt these regulations on an emergency basis pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of those regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or safety. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted by the department in order to implement this part shall not be subject to the review and approval of the Office of Administrative Law. These regulations shall become effective immediately upon filing with the Secretary of State.

SEC. 202. Section 17609.05 of the Welfare and Institutions Code is amended to read:

17609.05. (a) Each county shall file with the Controller quarterly and annual reports of trust fund deposits and expenditures within 45 days after the end of the quarter.

(b) The Controller shall verify deposits and notify appropriate state agencies upon request of deficits in deposits. The next scheduled allocations shall not be made until deposits are made accordingly. Reports shall be forwarded to the appropriate state department for expenditure verification.

SEC. 203. Section 17731 of the Welfare and Institutions Code is amended to read:

17731. (a) The county shall develop a plan to place children with special health care needs in foster care. This plan shall be submitted to the State Department of Social Services and the State Department of Health Services, not later than April 1, 1990, before beginning placement of children with special health care needs in specialized foster care homes. This subdivision shall not invalidate any placement made before April 1, 1990. Any county that has not submitted a plan by April 1, 1990, shall not continue to make placements of children with special health care needs until the plan has been submitted.

(b) Unless a local lead agency has been designated within the county, as described in Item 4260-113-890 of the Budget Act of 1989, the county department of social services shall be the lead agency with the responsibility of developing the plan to be submitted pursuant to subdivision (a). The county plan shall be formalized in an interagency agreement between the county department of social services and the other county and private agencies that are the involved parties.

(c) The county plan shall meet all the requirements specified in this subdivision. The regional center shall not be required to submit a plan. However, all requirements specified in this subdivision shall be met prior to a regional center placement of a child who is not a court dependent who has special health care needs.

(1) Prior to the placement of a child with special health care needs, an individualized health care plan, which may be the hospital discharge plan, shall be prepared for the child and, if necessary, in-home health support services shall be arranged. The individualized health care plan team shall be convened by the county department of social services caseworker or the regional center caseworker, to discuss the specific responsibilities of the foster parents for provision of in-home health care in accordance with the individualized health care plan developed by the child's physician or his or her designee. The plan may also include the identification of any available and funded medical services that are to be provided to the child in the home, including, but not limited to, assistance from registered nurses, licensed vocational nurses, public health nurses, physical therapists, and respite care workers. The individualized health care plan team shall delineate in the individualized health care plan the coordination of health and related services for the child. The plan shall be monitored by the county department of social services caseworker or regional center caseworker in accordance with applicable regulations.

(2) A child welfare services case plan or regional center individual program plan shall be developed in accordance with applicable regulations, and arrangements made for nonmedical support services.

(3) Foster parents shall be trained by health care professionals pursuant to the discharge plan of the facility releasing the child being placed in, or currently in, foster care. Training shall be provided as needed during the placement of the child and to the child's biological parent or parents when the child is being reunified with his or her family.

(4) Children with special health care needs shall be placed in the home of the prospective foster parent subsequent to training by a health care professional pursuant to the discharge plan of the facility releasing the child being placed in foster care.

(5) Assistant caregivers and respite care workers shall be either of the following:

(A) A health care professional.

(B) Trained by a health care professional in accordance with paragraph (3).

(6) Specialized foster care homes shall be monitored by the county or regional center according to applicable regulations. The health care plan shall designate which health care professional shall monitor the child's ongoing health care, including in-home health care provided by the foster parent.

(7) The child's individualized health care plan shall be reassessed no less than every six months during the time the child is placed in the specialized foster care home, to ensure that specialized care payments are appropriate to meet the child's health care needs.

(8) The placement agencies shall coordinate the sources of funding and services available to children with special health care needs in order to maximize the social services provided to these children and to avoid duplication of programs and funding.

SEC. 204. Section 18358.2 of the Welfare and Institutions Code is amended and renumbered to read:

18358.23. County welfare departments in participating counties shall do all of the following:

(a) Determine the placement of eligible children in intensive foster care programs. All children placed in the pilot program shall either have a completed level of care assessment indicating a need for services greater than regular foster care or have their placement reviewed by the participating county's existing interagency review team.

(b) Provide routine case management services.

(c) Monitor the implementation of the case plan for the child.

SEC. 205. Section 1 of Chapter 1400 of the Statutes of 1984 is amended to read:

Sec. 1. The Legislature hereby finds and declares that a small portion of parkland owned by the City of Garden Grove, the legal description of which is Parcel 2 of Parcel Map 82-509 in the City of Garden Grove, County of Orange, State of California, as shown on a map filed in Book 175, pages 11 and 12 of Parcel Maps, in the office of the County Recorder of Orange County, is not needed to meet the park and recreation needs of persons residing in the neighborhood served by it.

Accordingly, notwithstanding Chapter 9 (commencing with Section 38400) of Part 2 of Division 3 of Title 4 of the Government Code, or any other provision of law, the City of Garden Grove may sell this property without an election, upon adoption of an ordinance declaring that, pursuant to this section, no election will be held.

Additionally, notwithstanding any provision of law, the land may be sold for valuable consideration without providing replacement parklands and the funds received by the city shall be deposited in the general fund thereof.

The Legislature finds and declares that this act involves circumstances that are unique to this particular portion of parkland in the City of Garden Grove for which a general law could not apply.

SEC. 206. Section 22 of Chapter 1608 of the Statutes of 1990 is amended to read:

Sec. 22. If both this bill and SB 2268 are enacted and become effective on or before January 1, 1991, and each bill amends Section 33080.4 of the Health and Safety Code, as amended by Section 7 of Chapter 1140 of the Statutes of 1989, and this bill is enacted after SB 2268, then 33080.4 of the Health and Safety Code, as amended by Section 12 of this bill, shall not become operative.

SEC. 207. Section 6 of Chapter 1196 of the Statutes of 1991 is amended to read:

Sec. 6. If the City and County of San Francisco or the County of Stanislaus elects to participate in the pilot project specified in Section 116.232 of the Code of Civil Procedure, the participating city and county or county shall conduct a study in its respective jurisdiction to evaluate the use of small claims filings by public entities pursuant to the additional authority provided by Section 116.232 of the Code of Civil Procedure for claims in excess of two thousand five hundred dollars ($2,500). The study shall determine if this additional authority results in (1) an increase of 20 percent or more in collected revenue and (2) average cost savings of five hundred dollars ($500) or more per case filed and processed in the small claims court, when compared with the use of the municipal court for these filings.

Each study shall be conducted in consultation with each city, school district, county office of education, community college district, and local district within the participating jurisdiction that utilizes the authority provided by Section 116.232 of the Code of Civil Procedure, small claims advisors, the clerks of the municipal courts, and other appropriate representatives within the participating jurisdiction. The studies shall include all of the following:

(a) The number of small claims actions in excess of two thousand five hundred dollars ($2,500) filed by the participating jurisdiction, and cities, school districts, county offices of education, community college districts, and local districts within those jurisdictions.

(b) The number of those actions that are transferred from small claims court to municipal court pursuant to subdivision (b) of Section 116.232 of the Code of Civil Procedure.

(c) The number of judgment awards in excess of two thousand five hundred dollars ($2,500) resulting from small claims actions specified in subdivision (a).

(d) The difference in cost to the City and County of San Francisco or the County of Stanislaus to file an action in excess of two thousand five hundred dollars ($2,500) in small claims court, based on an assumed average cost of one thousand dollars ($1,000) per case for a municipal court filing and, utilizing that assumption, the amount of money saved by the City and County of San Francisco or the County of Stanislaus by filing these actions in small claims court.

(e) The types of small claims actions filed pursuant to the authority provided in Section 116.232 of the Code of Civil Procedure.

(f) The impact of the number of filings added to the calendar of

the small claims court pursuant to the authority provided in Section 116.232 of the Code of Civil Procedure, and whether those filings affect access to the small claims court by private citizens.

(g) The impact that the number of actions filed in small claims court pursuant to the authority provided in Section 116.232 of the Code of Civil Procedure would have upon the municipal court calendar if those actions had been filed in municipal court, and whether those filings affect efficient resolution of claims involving private citizens.

The city and county and the county participating in the pilot project each shall submit a report on the conclusions of its study to the Judiciary Committee of the Assembly and the Judiciary Committee of the Senate. If the studies determine, in accordance with the methodology specified in this section, that the authority provided in Section 116.232 of the Code of Civil Procedure has resulted in an increase of 20 percent or more in small claims filings by the affected public entities and an average cost savings per case of five hundred dollars ($500) or more, when compared with the use of the municipal court for these filings, the pilot project shall be considered a success.

SEC. 208. Section 1 of Chapter 563 of the Statutes of 1992 is amended to read:

Sec. 1. (a) The Legislature finds and declares that one of the beneficial results of the Hughes-Hart Educational Reform Act of 1983 (Chapter 498 of the Statutes of 1983) was the authorization for specialized secondary education programs in technology and the visual and performing arts. Two such exemplary programs are the Los Angeles High School for the Arts operated by the Los Angeles County Office of Education on the campus of the California State University, Los Angeles, and the California Academy for Math and Science operated jointly by the Compton and Long Beach Unified School Districts on the campus of the California State University, Dominguez Hills.

(b) The Legislature further finds and declares that these two programs, with the support of the California State University and major private donations, have met with great success in providing access and opportunity for programs in mathematics, science, and the visual and performing arts to many students, particularly underrepresented and disadvantaged youngsters, and have received state and national recognition as models to be replicated elsewhere.

(c) The Legislature declares that the purpose of this act is to acknowledge that the cost of these programs is higher than the cost of regular secondary school efforts, and to provide a level of enhanced funding that will ensure their continued success and expansion. In addition, this act will provide specific recognition of the fact that these programs may be operated by school districts or consortia of school districts operating one or more high schools.

SEC. 209. Any section of any act enacted by the Legislature during the 1993 calendar year that takes effect on or before January

1, 1994, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

CHAPTER 590

An act to add Section 667.71 to the Penal Code, relating to sexual offenders.

[Approved by Governor September 28, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. The Legislature hereby finds and declares that an alarmingly high frequency of violent sex crimes have been committed in California within recent years and that there is a compelling state interest to protect society from repeat sex offenders who have an incurable predisposition to commit violent sex crimes. In California, of approximately 50,000 registered sex offenders, a small number are violent and utterly lack control of their sexual impulses. These persons are likely to attack or otherwise inflict injury, pain and suffering, and even death upon their victims, as demonstrated by their repeat offenses. As a result, this act is necessary to provide a term of life imprisonment for a narrowly targeted class of repeat sex crime offenders.

SEC. 2. Section 667.71 is added to the Penal Code, to read:

667.71. (a) For the purpose of this section, a habitual sexual offender is a person who previously has served at least one prison term for one or more of the offenses listed in subdivision (e) and is either of the following:

(1) Convicted in the present proceeding of two separate offenses specified in subdivision (e) against two separate victims.

(2) Convicted in the present proceeding of at least three separate offenses specified in subdivision (e) against at least three separate victims.

(b) Except as specified in subdivision (d), a habitual sexual offender described in paragraph (1) of subdivision (a) is punishable by 25 years in the state prison. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce the prison term imposed by this subdivision. However, no habitual sexual offender sentenced under this subdivision may be released on parole

until he or she has been incarcerated for at least 20 years.

(c) Except as specified in subdivision (d), a habitual sexual offender described in paragraph (2) of subdivision (a) is punishable by imprisonment in the state prison for 25 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 25 years in the state prison imposed pursuant to this section. However, no habitual sexual offender sentenced under this subdivision may be released on parole until he or she has been incarcerated for at least 20 years.

(d) At the request of the prosecutor and in lieu of the punishment specified in subdivisions (b) and (c), the court shall order that the defendant be punished pursuant to Section 1170.1, 667.6, or 667.7, if applicable.

(e) This section shall apply to persons found guilty of violating paragraph (2) of subdivision (a) of Section 261, Section 264.1, subdivision (a) of Section 289, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(f) For the purpose of this section, prosecutorial jurisdiction is authorized in any county wherein at least one of the underlying offenses occurred.

(g) This section shall apply only if the defendant's status as a habitual sexual offender is alleged in the information, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by court sitting without a jury.

CHAPTER 591

An act to amend Section 1170.1 of, and to add Section 667.15 to, the Penal Code, relating to sentencing enhancements.

[Approved by Governor September 28, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 667.15 is added to the Penal Code, to read:

667.15. Any adult who, prior to or during the commission or attempted commission of a violation of Section 288 or 288.5, exhibits to the minor any matter, as defined in subdivision (d) of Section 311.11, the production of which involves the use of a person under the age of 14 years, knowing that the matter depicts a person under the age of 14 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, with the intent of arousing, appealing to, or gratifying the lust, passions, or

sexual desires of that person or of the minor, or with the intent, or for the purpose, of seducing the minor, shall be punished for a violation of this section as follows:

(a) If convicted of the commission or attempted commission of a violation of Section 288, the adult shall receive an additional term of one year, which punishment shall be imposed in addition and consecutive to the punishment imposed for the commission or attempted commission of a violation of Section 288.

(b) If convicted of the commission or attempted commission of a violation of Section 288.5, the adult shall receive an additional term of two years, which punishment shall be imposed in addition and consecutive to the punishment imposed for the commission or attempted commission of a violation of Section 288.5.

SEC. 2. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8) or (9) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving both separate victims and separate

occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims and separate occasions.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral

copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.15, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 3. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to

Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8) or (9) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from

prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.15, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or

12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 4. Section 3 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and AB 41. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 1170.1 of the Penal Code, and (3) this bill is enacted after AB 41, in which case Section 2 of this bill shall not become operative.

CHAPTER 592

An act to amend Section 1170.1 of the Penal Code, relating to sentencing.

[Approved by Governor September 28, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the

subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8) or (9) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving both separate victims and separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims and separate occasions.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from such custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may

exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of such additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is

lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements that may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 2. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate

term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8) or (9) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving both separate victims and separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims and separate occasions.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.15, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in Sections 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of

Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements that may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 3. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8) or (9) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive

term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from such custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of such additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral

copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements that may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 4. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies,

whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8) or (9) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies

committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.15, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant

to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in Sections 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements that may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 5. (a) Section 2 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and AB 25. It shall only become operative if (1) both bills are enacted and become effective January 1, 1994, (2) each bill amends Section 1170.1 of the Penal Code, and (3) AB 41 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 25, in which case Sections 1, 3, and 4 of this bill shall not become operative.

(b) Section 3 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and AB 41. It shall only become operative if (1) both bills are enacted and become effective January 1, 1994, (2) each bill amends Section 1170.1 of the Penal Code, (3) AB 25 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 41 in which case Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates amendments to Section

1170.1 of the Penal Code proposed by this bill, AB 25, and AB 41. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1994, (2) all three bills amend Section 1170.1 of the Penal Code, and (3) this bill is enacted after AB 25 and AB 41, in which case Sections 1, 2, and 3 of this bill shall not become operative.

CHAPTER 593

An act to amend Section 655.5 of the Business and Professions Code, relating to clinical laboratory services.

[Approved by Governor September 28, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 655.5 of the Business and Professions Code is amended to read:

655.5. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division or for any clinical laboratory to charge, bill, or otherwise solicit payment from any patient, client or customer for any clinical laboratory service not actually rendered by such person or clinical laboratory or under his or her or its direct supervision unless the patient, client, or customer is apprised at the first time of such charge, billing, or solicitation and any subsequent charge, billing, or solicitation of the name, address, and charges of the clinical laboratory performing the service. The first such written charge, bill, or other solicitation of payment and any subsequent charge, bill, or other solicitation of payment shall separately set forth the name, address, and charges of the clinical laboratory concerned and shall clearly show whether or not such charge is included in the total of the account, bill, or charge.

(b) Commencing July 1, 1994, a clinical laboratory shall provide to each of its referring providers, upon request, a schedule of fees for services provided to patients of the referring provider. The schedule shall be provided within two working days after the clinical laboratory receives the request. For the purposes of this subdivision, a "referring provider" means any provider who has referred a patient to the clinical laboratory in the preceding six-month period. Commencing July 1, 1994, a clinical laboratory that provides a list of laboratory services to a referring provider or to a potential referring provider shall include a schedule of fees for the laboratory services listed.

(c) It is also unlawful for any person licensed under this division or under any initiative act referred to in this division to charge additional charges for any clinical laboratory service that is not actually rendered by the licensee to the patient and itemized in the

charge, bill, or other solicitation of payment. This section shall not be construed to prohibit any itemized charge for any service actually rendered to the patient by the licensee.

(d) This section shall not apply to any person or clinical laboratory who or which contracts directly with a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, if such services are to be provided to members of the plan on a prepaid basis and without additional charge or liability on account thereof.

(e) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both such imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison.

SEC. 1.5. Section 655.5 of the Business and Professions Code is amended to read:

655.5. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division, or any clinical laboratory, or any health facility when billing for a clinical laboratory of the facility, to charge, bill, or otherwise solicit payment from any patient, client, or customer for any clinical laboratory service not actually rendered by such person or clinical laboratory or under his or her or its direct supervision unless the patient, client, or customer is apprised at the first time of the charge, billing, or solicitation of the name, address, and charges of the clinical laboratory performing the service. The first such written charge, bill, or other solicitation of payment shall separately set forth the name, address, and charges of the clinical laboratory concerned and shall clearly show whether or not such charge is included in the total of the account, bill, or charge. This subdivision shall not apply to a clinical laboratory of a health facility or a health facility when billing for a clinical laboratory of the facility nor to a person licensed under this division or under any initiative act referred to in this division if the standardized billing form used by the facility or person requires a summary entry for all clinical laboratory charges. For purposes of this subdivision, "health facility" has the same meaning as defined in Section 1250 of the Health and Safety Code.

(b) Commencing July 1, 1994, a clinical laboratory shall provide to each of its referring providers, upon request, a schedule of fees for services provided to patients of the referring provider. The schedule shall be provided within two working days after the clinical laboratory receives the request. For the purposes of this subdivision, a "referring provider" means any provider who has referred a patient to the clinical laboratory in the preceding six-month period. Commencing July 1, 1994, a clinical laboratory that provides a list of laboratory services to a referring provider or to a potential referring provider shall include a schedule of fees for the laboratory services listed.

(c) It is also unlawful for any person licensed under this division

or under any initiative act referred to in this division to charge additional charges for any clinical laboratory service that is not actually rendered by the licensee to the patient and itemized in the charge, bill, or other solicitation of payment. This section shall not be construed to prohibit any of the following:

(1) Any itemized charge for any service actually rendered to the patient by the licensee.

(2) Any summary charge for services actually rendered to a patient by a health facility, as defined in Section 1250 of the Health and Safety Code, or by a person licensed under this division or under any initiative act referred to in this division if the standardized billing form used by the facility or person requires a summary entry for all clinical laboratory charges.

(d) This section shall not apply to any person or clinical laboratory who or which contracts directly with a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, if such services are to be provided to members of the plan on a prepaid basis and without additional charge or liability on account thereof.

(e) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both such imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison.

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

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 655.5 of the Business and Professions Code proposed by this bill and AB 179. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 655.5 of the Business and Professions Code, and (3) this bill is enacted after AB 179, in which case Section 655.5 of the Business and Professions Code, as amended by AB 179, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 594

An act to amend Sections 400 and 3051 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 29, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 400 of the Vehicle Code is amended to read:

400. (a) A "motorcycle" is any motor vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three wheels in contact with the ground, and weighing less than 1,500 pounds.

(b) A motor vehicle that has four wheels in contact with the ground, two of which are a functional part of a sidecar, is a motorcycle if the vehicle otherwise comes within the definition of subdivision (a).

(c) A motor vehicle that is electrically powered, has a maximum speed of 45 miles per hour, and weighs less than 2,500 pounds, is a motorcycle if the vehicle otherwise comes within the definition of subdivision (a).

(d) A farm tractor is not a motorcycle.

SEC. 1.5. Section 400 of the Vehicle Code is amended to read:

400. (a) A "motorcycle" is any motor vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three wheels in contact with the ground, and weighing less than 1,500 pounds.

(b) A motor vehicle that has four wheels in contact with the ground, two of which are a functional part of a sidecar, is a motorcycle if the vehicle otherwise comes within the definition of subdivision (a).

(c) A motor vehicle that is electrically powered, has a maximum speed of 45 miles per hour, and weighs less than 2,500 pounds, is a motorcycle if the vehicle otherwise comes within the definition of subdivision (a).

(d) A farm tractor is not a motorcycle.

(e) A motor vehicle that otherwise meets the requirements of subdivision (a), has a partially or completely enclosed seating area for the driver and passenger, and is used by local public agencies for the enforcement of parking control provisions, is not a motorcycle.

(f) This section shall become inoperative if the Director of Transportation receives notice of a determination by the National Highway Traffic Safety Administration that the implementation of that provision would subject California to a transfer of funds pursuant to Section 153 of Title 23 of the United States Code.

(g) Upon receipt of a notice of determination from the National Highway Traffic Safety Administration pursuant to subdivision (f),

the Director of Transportation shall submit the notice of determination to the Secretary of State, and this section shall be repealed upon receipt of that notice by the Secretary of State.

(h) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 2. Section 3051 of the Vehicle Code is amended to read:

3051. This chapter does not apply to any person licensed as a transporter under Article 1 (commencing with Section 11700) or as a salesperson under Article 2 (commencing with Section 11800) of Chapter 4 of Division 5, or to any licensee who is not a new motor vehicle dealer, motor vehicle manufacturer, manufacturer branch, new motor vehicle distributor, distributor branch or representative. This chapter does not apply to transactions involving "mobilehomes," as defined in Section 18008 of the Health and Safety Code, "recreational vehicles," as defined in Section 18010.5 of the Health and Safety Code, "commercial coaches," as defined in Section 18012 of the Health and Safety Code, or off-highway motor vehicles subject to identification, as defined in Section 38012, except off-highway motorcycles, as defined in Section 436, and all-terrain vehicles, as defined in Section 111. Except as otherwise provided in this chapter, this chapter applies to a new motor vehicle dealer as defined in Section 426, a vehicle manufacturer as defined in Section 672, a manufacturer branch as defined in Section 389, a distributor as defined in Section 296, a distributor branch as defined in Section 297, a representative as defined in Section 512, or an applicant therefor.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 400 of the Vehicle Code proposed by both this bill and AB 92. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 400 of the Vehicle Code, and (3) this bill is enacted after AB 92, in which case Section 1 of this bill shall not become operative, and, if all of those conditions occur, on the date of the repeal of Section 400 of the Vehicle Code by Section 1.5 of this bill, Section 400 of the Vehicle Code, as added by AB 92, shall become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 595

An act to amend Sections 261, 262, 264, 286, 288a, 289, and 290 of the Penal Code, relating to sex offenses.

[Approved by Governor September 29, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 261 of the Penal Code is amended to read:

261. (a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

(1) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, administered by or with the privity of the accused.

(4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(5) Where a person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.

(6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict

extreme pain, serious bodily injury, or death.

(7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(b) As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

(c) As used in this section, "menace" means any threat, declaration, or act which shows an intention to inflict an injury upon another.

SEC. 2. Section 262 of the Penal Code is amended to read:

262. (a) Rape of a person who is the spouse of the perpetrator is an act of sexual intercourse accomplished under any of the following circumstances:

(1) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(2) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, administered by or with the knowledge of the accused.

(3) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(5) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a

reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(b) Section 800 shall apply to this section. However, no prosecution shall be commenced under this section unless the violation was reported to medical personnel, a member of the clergy, an attorney, a shelter representative, a counselor, a judicial officer, a rape crisis agency, a prosecuting agency, a law enforcement officer, or a firefighter within one year after the date of the violation. This reporting requirement shall not apply if the victim's allegation of the offense is corroborated by independent evidence that would otherwise be admissible during trial.

(c) As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in apprising the existence of duress.

(d) As used in this section, "menace" means any threat, declaration, or act that shows an intention to inflict an injury upon another.

(e) If probation is granted upon conviction of a violation of this section, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars ($1,000).

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 3. Section 264 of the Penal Code is amended to read:

264. (a) Rape, as defined in Section 261 or 262, is punishable by

imprisonment in the state prison for three, six, or eight years. Unlawful sexual intercourse, as defined in Section 261.5, is punishable either by imprisonment in a county jail for not more than one year or in the state prison.

(b) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates Section 261, 261.5, or 262 with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 4. Section 286 of the Penal Code is amended to read:

286. (a) Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.

(b) (1) Except as provided in Section 288, any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(2) Except as provided in Section 288, any person over the age of 21 years who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.

(c) Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he or she, or when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat shall be punished by imprisonment in the state prison for five, seven, or nine years.

(e) Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4504, or in any local detention facility as defined in Section 6031.4 shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(f) Any person who commits an act of sodomy, and the victim is

at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(g) Except as provided in subdivision (h), a person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of sodomy, where the victim is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, administered by or with the privity of the accused, shall be punished by imprisonment in the state prison for three, six, or eight years.

(j) Any person who commits an act of sodomy, where the victim submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for

three, six, or eight years.

(k) Any person who commits an act of sodomy, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(*l*) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court, however, shall take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 5. Section 288a of the Penal Code is amended to read:

288a. (a) Oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person.

(b) (1) Except as provided in Section 288, any person who participates in an act of oral copulation with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(2) Except as provided in Section 288, any person over the age of 21 years who participates in an act of oral copulation with another person who is under 16 years of age is guilty of a felony.

(c) Any person who participates in an act of oral copulation with another person who is under 14 years of age and more than 10 years younger than he or she, or when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting that other person, commits an act of oral copulation (1) when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, or (2) where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the

perpetrator will execute the threat, or (3) where the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act shall be punished by imprisonment in the state prison for five, seven, or nine years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime described under paragraph (3), that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(e) Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504 or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(f) Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for a period of three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(g) Except as provided in subdivision (h), any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally

disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of oral copulation, where the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, administered by or with the privity of the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(j) Any person who commits an act of oral copulation, where the victim submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(k) Any person who commits an act of oral copulation, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(*l*) As used in subdivisions (c) and (d) "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 6. Section 289 of the Penal Code is amended to read:

289. (a) Every person who causes the penetration, however slight, of the genital or anal openings of any person or causes another person to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on

the victim or another person or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) Except as provided in subdivision (c), every person who causes the penetration, however slight, of the genital or anal openings of any person or causes another person to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(c) Every person who causes the penetration, however slight, of the genital or anal openings of any person or causes another person to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(d) Every person who causes the penetration, however slight, of the genital or anal openings of any person or causes another person to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse by

any foreign object, substance, instrument, or device, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(e) Every person who causes the penetration, however slight, of the genital or anal openings of any person or causes another person to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, where the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, administered by or with the privity of the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(f) Every person who causes the penetration, however slight, of the genital or anal openings of any person or causes another person to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, where the victim submits under the belief that the person committing the act or causing the act to be committed is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(g) Every person who causes the penetration, however slight, of the genital or anal openings of any person or causes another person to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(h) Except as provided in Section 288, any person who participates in an act of penetration of genital or anal openings with

a foreign object, substance, instrument, or device of a person who is under 18 years of age or causes another person under 18 years of age to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse, shall be punished by imprisonment in the state prison or in the county jail for a period of not more than one year.

(i) Except as provided in Section 288, any person over the age of 21 years who participates in an act of penetration of the genital or anal openings with a foreign object, substance, instrument, or device of another person who is under 16 years of age or causes another person under 16 years of age to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse, shall be guilty of a felony.

(j) Any person who participates in an act of penetration of the genital or anal openings with a foreign object, instrument, or device of another person who is under 14 years of age and who is more than 10 years younger than he or she or causes another person who is under 14 years of age and who is more than 10 years younger than the defendant to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse, shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) As used in this section, "foreign object, substance, instrument, or device" shall include any part of the body, except a sexual organ.

(*l*) As used in subdivision (a), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury or death.

(m) As used in this section, "victim" includes any person who the defendant causes to penetrate the genital or anal openings of the defendant or another person or whose genital or anal openings are caused to be penetrated by the defendant or another person and who otherwise qualifies as a victim under the requirements of this section.

SEC. 7. Section 290 of the Penal Code is amended to read:

290. (a) Any person who, since July 1, 1944, has been or is hereafter convicted in this state of the offense of assault with intent to commit rape or sodomy under Section 220, or of any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or any offense defined in paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison, or of any offense defined in Section 264.1, 266, 267, 285, 286, 288, 288a, 288.5, 289, or 647.6 or former Section 647a, subdivision (d) of Section 647, or subdivision 1 or 2 of Section 314, or of any offense involving lewd and lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; or any person who since that date or at any time hereafter is discharged or paroled from a penal institution where he or she was confined because of the commission or attempt to commit one of the

above-mentioned offenses; or any person who since that date or at any time hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code; or any person who has been since that date or is hereafter convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall, within 30 days after the effective date of this section or within 14 days of coming into any county, city, or city and county in which he or she temporarily resides or is domiciled for that length of time register with the chief of police of the city in which he or she is domiciled or the sheriff of the county if he or she is domiciled in an unincorporated area, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities.

(b) Any person who, after August 1, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where he or she was confined because of the commission or attempt to commit one of the above-mentioned offenses or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement or hospital shall give one copy of the form to the person, and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction which makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency which prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy. All forms shall, if the conviction which makes the person subject to this section is a felony conviction, be transmitted within those times as to be received by the local law enforcement agency or agencies, and prosecuting agency 30 days prior to the discharge, parole, or release of the person.

(c) Any person who, after August 1, 1950, is convicted in this state of the commission or attempt to commit any of the above-mentioned offenses and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the court in which the person has been convicted and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the following offenses shall be subject to registration under the procedures of this section: assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220; or any offense defined in Section 288, paragraph (1) of subdivision (b) or subdivision (c) or (d) of Section 286, Section 288.5, paragraph (1) of subdivision (b) or subdivision (c) or (d) of Section 288a, paragraph (2) of subdivision (a) of Section 261, or subdivision (a) of Section 289; or any offense under Section 264.1 involving rape in concert with force or fear of bodily injury or penetration by any foreign object in concert with force or fear of bodily injury.

(2) Any person who is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(3) Prior to discharge or parole from the Department of the Youth Authority, all persons subject to registration shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25 years.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and

other agencies or public officials shall be destroyed when the person required to register attains the age of 25 years or has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code, whichever event occurs first. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case which are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) The registration shall consist of (1) a statement in writing signed by the person, giving information as may be required by the Department of Justice, and (2) the fingerprints and photograph of the person. Within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, and photograph to the Department of Justice.

(f) If any person required to register pursuant to this section changes his or her residence address, the person shall inform, in writing within 10 days, the law enforcement agency or agencies with whom he or she last registered of the new address. The law enforcement agency or agencies shall, within three days after receipt of this information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.

(g) (1) Any person required to register under this section who violates any of its provisions is guilty of a misdemeanor. Any person who has been convicted of assault with intent to commit rape, oral copulation, or sodomy under Section 220, or any violation of Section 261, any offense defined in paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison, or any violation of Section 264.1, 286, 288, 288a, 288.5, or 289, and who is required to register under this section who willfully violates any of the provisions of this section is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in a county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in a county jail and of completing probation of at least one year.

(2) Any person who has two prior convictions for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a public offense punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in state prison for 16 months, or two or three years.

The existence of any fact which would bring a person under this paragraph shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true

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

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) The statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This provision does not apply to any person temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) Every person who, prior to January 1, 1985, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 30 to 14 days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (f) if the person did register within 30 days.

SEC. 8. Section 290 of the Penal Code is amended to read:

290. (a) Any person who, since July 1, 1944, has been or is hereafter convicted in this state of the offense of assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220, or of any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or any offense defined in paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison, or of any offense defined in Section 264.1, 266, 267, 285, 286, 288, 288a, 288.5, 289, or 647.6 or former Section 647a, subdivision (d) of Section 647, or subdivision 1 or 2 of Section 314, or of any offense involving lewd and lascivious conduct under Section

272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; or any person who since that date or at any time hereafter is discharged or paroled from a penal institution where he or she was confined because of the commission or attempt to commit one of the above-mentioned offenses; or any person who since that date or at any time hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code; or any person who has been since that date or is hereafter convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall, within 30 days after the effective date of this section or within 14 days of coming into any county, city, or city and county in which he or she temporarily resides or is domiciled for that length of time, register with the chief of police of the city in which he or she is domiciled, or the sheriff of the county if he or she is domiciled in an unincorporated area, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities.

(b) Any person who, after August 1, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where he or she was confined because of the commission or attempt to commit one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement or hospital shall give one copy of the form to the person, and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction which makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency which prosecuted the person; and one copy to

the Department of Justice. The official in charge of the place of confinement shall retain one copy. All forms shall, if the conviction which makes the person subject to this section is a felony conviction, be transmitted within those times as to be received by the local law enforcement agency or agencies, and prosecuting agency 30 days prior to the discharge, parole, or release of the person.

(c) Any person who, after August 1, 1950, is convicted in this state of the commission or attempt to commit any of the above-mentioned offenses and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the court in which the person has been convicted and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the following offenses shall be subject to registration under the procedures of this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, paragraph (2) of subdivision (a) of Section 261, or subdivision (a) of Section 289.

(C) Any offense under Section 264.1 involving rape in concert with force or fear of bodily injury or penetration by any foreign object in concert with force or fear of bodily injury.

(2) Any person who is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(3) Prior to discharge or parole from the Department of the Youth Authority, all persons subject to registration shall be informed of the duty to register under the procedures set forth in this section.

Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25 years.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person required to register attains the age of 25 years or has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code, whichever event occurs first. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case which are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) The registration shall consist of (1) a statement in writing signed by the person, giving information as may be required by the Department of Justice, and (2) the fingerprints and photograph of the person. Within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, and photograph to the Department of Justice.

(f) If any person required to register pursuant to this section changes his or her residence address, the person shall inform, in writing within 10 days, the law enforcement agency or agencies with whom he or she last registered of the new address. The law enforcement agency or agencies shall, within three days after receipt of this information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.

(g) (1) Any person required to register under this section who violates any of its provisions is guilty of a misdemeanor. Any person who has been convicted of assault with intent to commit rape, oral copulation, or sodomy under Section 220, any violation of Section 264.1, 288, or 289 under Section 220, any violation of Section 261, any offense defined in paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison, or any violation of Section 264.1, 286, 288, 288a, 288.5, or 289, and who is required to register under this section who willfully violates any of the provisions of this section is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in a county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in a county jail and of completing probation of at least one year.

(2) Any person who has two prior convictions for the offense of

failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison for 16 months, or two or three years.

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

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) The statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This provision shall not apply to any person temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) Every person who, prior to January 1, 1985, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 30 to 14 days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 30 days.

SEC. 9. Section 8 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill and AB 191. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 290 of the

Penal Code, and (3) this bill is enacted after AB 191, in which case Section 290 of the Penal Code, as amended by AB 191, shall remain operative only until the operative date of this bill, at which time Section 8 of this bill shall become operative, and Section 7 of this bill shall not become operative.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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

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

CHAPTER 596

An act to amend Section 261.5 of the Penal Code, relating to crime.

[Approved by Governor September 29, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 261.5 of the Penal Code is amended to read:

261.5. (a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under the age of 18 years.

(b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.

(d) Any person over the age of 21 years who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age

is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison for two, three, or four years.

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

CHAPTER 597

An act to amend Sections 640.5 and 640.6 of the Penal Code, relating to crimes.

[Approved by Governor September 29, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 640.5 of the Penal Code is amended to read:

640.5. (a) Any person who writes, sprays, scratches, or otherwise affixes graffiti on or in the facilities or vehicles of a governmental entity, as defined by Section 811.2 of the Government Code, or on or in the facilities or vehicles of a public transportation system as defined by Section 99211 of the Public Utilities Code, or on or in the facilities of or vehicles operated by entities subsidized by, the Department of Transportation, or on or in any leased or rented facilities or vehicles for which any of the above entities incur costs of less than two hundred fifty dollars ($250) for cleanup, repair, or replacement is guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500) and by a minimum of 24 hours of community service for a total time not to exceed 48 hours over a period not to exceed 30 days, during a time other than during his or her hours of school attendance or employment. This subdivision does not preclude application of Section 594.

(b) (1) Upon conviction of any person under subdivision (a), the court, in addition to any punishment imposed pursuant to subdivision (a), at the victim's option, may order the defendant to perform the necessary labor to clean up, repair, or replace the property damaged by that person, but shall not order the person to pay for any related costs incurred by the cleanup, repair, or replacement of the property.

(2) If a minor is personally unable to pay any fine levied for

violating subdivision (a), the parent or legal guardian of the minor shall be liable for payment of the fine. A court may waive payment of the fine by the parent or legal guardian upon a finding of good cause.

(c) Any fine levied for a violation of subdivision (a) shall be credited by the county treasurer pursuant to Section 1463.29 to the governmental entity having jurisdiction over, or responsibility for, the facility or vehicle involved, to be used for removal of the graffiti. Before crediting these fines to the appropriate governmental entity, the county may determine the administrative costs it has incurred pursuant to this section, and retain an amount equal to those costs.

Any community service which is required pursuant to subdivision (a) of a person under the age of 18 years may be performed in the presence, and under the direct supervision, of the person's parent or legal guardian.

(d) As used in this section, graffiti means any form of unauthorized painting, writing, or inscription regardless of the content or nature of the material used in the commission of the act.

SEC. 1.5. Section 640.5 of the Penal Code is amended to read:

640.5. (a) Any person who writes, sprays, scratches, or otherwise affixes graffiti on or in the facilities or vehicles of a governmental entity, as defined by Section 811.2 of the Government Code, or on or in the facilities or vehicles of a public transportation system as defined by Section 99211 of the Public Utilities Code, or on or in the facilities of or vehicles operated by entities subsidized by, the Department of Transportation, or on or in any leased or rented facilities or vehicles for which any of the above entities incur costs of less than two hundred fifty dollars ($250) for cleanup, repair, or replacement is guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500) and by a minimum of 24 hours of community service for a total time not to exceed 100 hours over a period not to exceed 90 days, during a time other than during his or her hours of school attendance or employment. This subdivision does not preclude application of Section 594.

(b) If the person has been convicted previously of an infraction under subdivision (a) or has a prior conviction of Section 594, 640.6, or 640.7, the offense is a misdemeanor, punishable by imprisonment in a county jail not to exceed six months, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine. As a condition of probation, the court shall order the defendant to perform a minimum of 48 hours of community service not to exceed 200 hours over a period not to exceed 180 days during a time other than during his or her hours of school attendance or employment.

(c) Every person who, having been convicted previously under this section or Section 594, 640.6, or 640.7, or any combination of these offenses, on two separate occasions, and having been incarcerated pursuant to a sentence, a conditional sentence, or a grant of probation for at least one of the convictions, is subsequently convicted under this section, shall be punished by imprisonment in

a county jail not to exceed one year. As a condition of probation, the court may order the defendant to perform community service not to exceed 300 hours over a period not to exceed 240 days during a time other than during his or her hours of school attendance or employment.

(d) (1) Upon conviction of any person under subdivision (a), the court , in addition to any punishment imposed pursuant to subdivision (a), (b), or (c), at the victim's option, may order the defendant to perform the necessary labor to clean up, repair, or replace the property damaged by that person, but shall not order the person to pay for any related costs incurred by the cleanup, repair, or replacement of the property.

(2) If a minor is personally unable to pay any fine levied for violating subdivision (a), (b), or (c), the parent or legal guardian of the minor shall be liable for payment of the fine. A court may waive payment of the fine by the parent or legal guardian upon a finding of good cause.

(e) Any fine levied for a violation of subdivision (a), (b), or (c) shall be credited by the county treasurer pursuant to Section 1463.29 to the governmental entity having jurisdiction over, or responsibility for, the facility or vehicle involved, to be used for removal of the graffiti. Before crediting these fines to the appropriate governmental entity, the county may determine the administrative costs it has incurred pursuant to this section, and retain an amount equal to those costs.

Any community service which is required pursuant to subdivision (a), (b), or (c) of a person under the age of 18 years may be performed in the presence, and under the direct supervision, of the person's parent or legal guardian.

(f) As used in this section, graffiti means any form of unauthorized painting, writing, or inscription regardless of the content or nature of the material used in the commission of the act.

SEC. 2. Section 640.6 of the Penal Code is amended to read:

640.6. (a) Except as provided in Section 640.5, any person who writes, sprays, scratches, or otherwise affixes graffiti on any real or personal property not his or her own, when the amount of the defacement, damage, or destruction is less than two hundred fifty dollars ($250), is guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500). This subdivision does not preclude application of Section 594.

(b) (1) Upon conviction of any person under subdivision (a), the court, in addition to any punishment imposed pursuant to subdivision (a), shall order the defendant to complete a minimum of 24 hours of community service, not to exceed 48 hours for the first conviction. Upon the second and subsequent conviction, the court shall order the defendant to complete a minimum of 48 hours of community service, not to exceed 96 hours. A defendant shall be ordered to complete community service during a time other than during his or her hours of school attendance or employment.

(2) Upon conviction of any person under subdivision (a), the court, in addition to any punishment imposed pursuant to subdivision (a), at the victim's option, may order the defendant to perform the necessary labor to clean up, repair, or replace the property damaged by that person, but shall not order the person to pay for any related costs incurred by the cleanup, repair, or replacement of the property.

(3) If a minor is personally unable to pay any fine levied for violating subdivision (a), the parent or legal guardian of the minor shall be liable for payment of the fine. A court may waive payment of the fine by the parent or legal guardian upon a finding of good cause.

Any community service which is required pursuant to subdivision (b) of a person under the age of 18 years may be performed in the presence, and under the direct supervision, of the person's parent or legal guardian.

(4) As used in this section, graffiti means any form of unauthorized painting, writing, or inscription regardless of the content or nature of the material used in the commission of the act.

SEC. 2.5. Section 640.6 of the Penal Code is amended to read:

640.6. (a) Except as provided in Section 640.5, any person who writes, sprays, scratches, or otherwise affixes graffiti on any real or personal property not his or her own, when the amount of the defacement, damage, or destruction is less than two hundred fifty dollars ($250), is guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500). This subdivision does not preclude application of Section 594.

In addition to the penalty set forth in this section, the court shall order the defendant to perform a minimum of 24 hours of community service not to exceed 100 hours over a period not to exceed 90 days during a time other than during his or her hours of school attendance or employment.

(b) If the person has been convicted previously of an infraction under subdivision (a) or has a prior conviction of Section 594, 640.5, or 640.7, the offense is a misdemeanor, punishable by not to exceed six months in a county jail, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine. As a condition of probation, the court shall order the defendant to perform a minimum of 48 hours of community service not to exceed 200 hours over a period not to exceed 180 days during a time other than during his or her hours of school attendance or employment.

(c) Every person who, having been convicted previously under this section or Section 594, 640.5, or 640.7, or any combination of these offenses, on two separate occasions, and having been incarcerated pursuant to a sentence, a conditional sentence, or a grant of probation for at least one of the convictions, is subsequently convicted under this section, shall be punished by imprisonment in a county jail not to exceed one year. As a condition of probation, the court may order the defendant to perform community service not to

exceed 300 hours over a period not to exceed 240 days during a time other than during his or her hours of school attendance or employment.

(d) Upon conviction of any person under subdivision (a), the court , in addition to any punishment imposed pursuant to subdivision (a), (b), or (c), at the victim's option, may order the defendant to perform the necessary labor to clean up, repair, or replace the property damaged by that person, but shall not order the person to pay for any related costs incurred by the cleanup, repair, or replacement of the property.

(e) If a minor is personally unable to pay any fine levied for violating subdivision (a), (b), or (c), the parent or legal guardian of the minor shall be liable for payment of the fine. A court may waive payment of the fine by the parent or legal guardian upon a finding of good cause.

Any community service which is required pursuant to subdivision (a), (b), or (c) of a person under the age of 18 years may be performed in the presence, and under the direct supervision, of the person's parent or legal guardian.

(f) As used in this section, graffiti means any form of unauthorized painting, writing, or inscription regardless of the content or nature of the material used in the commission of the act.

SEC. 3. (a) Section 1.5 of this bill further amends Section 640.5 of the Penal Code as proposed by AB 1179. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 640.5 of the Penal Code, and (3) this bill is enacted after AB 1179, in which case Section 1 of this bill shall not become operative.

(b) Section 2.5 of this bill further amends Section 640.6 of the Penal Code as proposed by AB 1179. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 640.6 of the Penal Code, and (3) this bill is enacted after AB 1179, in which case, Section 2 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 598

An act to amend Sections 171b, 417.2, and 626.10 of, and to add Section 417.4 to, the Penal Code, relating to weapons.

[Approved by Governor September 29, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 171b of the Penal Code is amended to read:

171b. (a) Any person who brings or possesses within any state or local public building or at any meeting required to be open to the public pursuant to Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, or Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, the Government Code, any of the following is guilty of a public offense punishable by imprisonment in a county jail for not more than one year, or in the state prison:

(1) Any firearm.

(2) Any deadly weapon described in Section 653k or 12020.

(3) Any knife with a blade length in excess of four inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands.

(4) Any tear gas weapon, as defined in Sections 12401 and 12402.

(5) Any taser or stun gun, as defined in Section 244.5.

(6) Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun or paint gun.

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

(1) A person who possesses weapons in, or transports weapons into, a court of law to be used as evidence.

(2) (A) A duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry concealed weapons as described in subdivision (a) of Section 12027, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer.

(B) Notwithstanding subparagraph (A), subdivision (a) shall apply to any person who brings or possesses any weapon specified therein within any courtroom if he or she is a party to an action pending before the court.

(3) A person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

(4) A person holding a valid tear gas weapon card pursuant to

Section 12403.7 allowing that person to carry the tear gas or tear gas weapon.

(5) A person who has permission to possess that weapon granted in writing by a duly authorized official who is in charge of the security of the state or local government building.

(6) A person who lawfully resides in, lawfully owns, or is in lawful possession of, that building with respect to those portions of the building that are not owned or leased by the state or local government.

(7) A person licensed or registered in accordance with, and acting within the course and scope of, Chapter 11.5 (commencing with Section 7512) or Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code who has been hired by the owner or manager of the building if the person has permission pursuant to paragraph (5).

(c) As used in this section, "state or local public building" means a building that meets all of the following criteria:

(1) It is a building or part of a building owned or leased by the state or local government, if state or local public employees are regularly present for the purposes of performing their official duties. A state or local public building includes, but is not limited to, a building that contains a courtroom.

(2) It is not a building or facility, or a part thereof, that is referred to in Section 171c, 171d, 626.9, 626.95, or 626.10 of this code or Section 29634 of the Elections Code.

(3) It is a building not regularly used, and not intended to be used, by state or local employees as a place of residence.

SEC. 2. Section 417.2 of the Penal Code is amended to read:

417.2. (a) Commencing January 1, 1989, any person who purchases, sells, manufactures, ships, transports, distributes, or receives, by mail order or in any other manner, an imitation firearm in violation of this section shall be liable for a civil fine in an action brought by the city attorney of the city or the district attorney of the county of not more than ten thousand dollars ($10,000) for each violation.

(b) The manufacture, purchase, sale, shipping, transport, distribution, or receipt, by mail or in any other manner, of imitation firearms is permitted if the device is manufactured, purchased, sold, shipped, transported, distributed, or received for any of the following purposes:

(1) Solely for export in interstate or foreign commerce.

(2) Solely for lawful use in theatrical productions, including motion picture, television, and stage productions.

(3) For use in a certified or regulated athletic event or competition.

(4) For use in military or civil defense activities.

(5) For public displays authorized by public or private schools.

(c) As used in this section, "imitation firearm" means a replica of a firearm that is so substantially similar in physical properties to an

existing firearm as to lead a reasonable person to conclude that the replica is a firearm.

(d) As used in this section, "imitation firearm" does not include any of the following:

(1) A nonfiring collector's replica of an antique firearm that was designed prior to 1898, is historically significant, and is offered for sale in conjunction with a wall plaque or presentation case.

(2) A nonfiring collector's replica of a firearm that was designed after 1898, is historically significant, was issued as a commemorative by a nonprofit organization, and is offered for sale in conjunction with a wall plaque or presentation case.

(3) A device, as defined in subdivision (g) of Section 12001.

(4) A firearm that contains, or has affixed to it, a marking approved by the Secretary of Commerce, as provided in Section 5001 of Title 15 of the United States Code.

(5) An instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO_2 pressure, or spring action, or a spot marker gun.

SEC. 3. Section 417.4 is added to the Penal Code, to read:

417.4. Every person who, except in self-defense, draws or exhibits an imitation firearm in a threatening manner against another in such a way as to cause a reasonable person apprehension or fear of bodily harm is guilty of a misdemeanor punishable by imprisonment in a county jail for a term of not less than 30 days. For purposes of this section, an imitation firearm means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.

SEC. 4. Section 626.10 of the Penal Code is amended to read:

626.10. (a) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, knife having a blade longer than 2½ inches, folding knife with a blade that locks into place, a razor with an unguarded blade, a taser, or a stun gun, as defined in subdivision (a) of Section 244.5, any instrument that expels a metallic projectile such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun, upon the grounds of, or within, any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, is guilty of a public offense punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.

(b) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2,

a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, or knife having a fixed blade longer than 2½ inches upon the grounds of, or within, any private university, the University of California, the California State University, or the California Community Colleges is guilty of a public offense punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.

(c) Subdivisions (a) and (b) shall not apply to any person who brings or possesses a knife having a blade longer than 2½ inches or a razor with an unguarded blade upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college at the direction of a faculty member of the private university, state university, or community college, or a certificated or classified employee of the school for use in a university, state university, community college, or school-sponsored activity or class.

(d) Subdivisions (a) and (b) do not apply to any person who brings or possesses an ice pick, a knife having a blade longer than 2½ inches, or a razor with an unguarded blade upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college for a lawful purpose within the scope of the person's employment.

(e) Subdivision (b) shall not apply to any person who brings or possesses a knife having a fixed blade longer than 3½ inches upon the grounds of, or within, any private university, state university, or community college for lawful use in or around a residence or residential facility located upon those grounds or for lawful use in food preparation or consumption.

(f) Subdivision (a) shall not apply to any person who brings an instrument that expels a metallic projectile such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun upon the ground of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if the person has the written permission of the school principal or his or her designee.

(g) Any certificated or classified employee or school peace officer of a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, may seize any of the weapons described in subdivision (a), and any certificated or classified employee or school peace officer of any private university, state university, or community college may seize any of the weapons described in subdivision (b), from the possession of any person upon

the grounds of, or within, the school if he or she knows or has reasonable cause to know the person is prohibited from bringing or possessing the weapon upon the grounds of, or within, the school.

(h) As used in this section, "dirk" or "dagger" means a knife or other instrument with or without a handguard that is primarily designed, constructed, or altered to be a stabbing instrument designed to inflict great bodily injury or death.

SEC. 5. If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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

CHAPTER 599

An act to amend Section 626.10 of the Penal Code, relating to weapons.

[Approved by Governor September 29, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 626.10 of the Penal Code is amended to read:

626.10. (a) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, knife having a blade longer than 3½ inches, folding knife with a blade that locks into place, a razor with an unguarded blade, a taser, a stun gun, as defined in subdivision (a) of Section 244.5, any instrument that expels a metallic projectile such as a BB or a pellet, through the force of air pressure,

CO_2 pressure, or spring action, or any spot marker gun, upon the grounds of, or within, any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.

(b) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, or knife having a fixed blade longer than 3½ inches upon the grounds of, or within, any private university, the University of California, the California State University, or the California Community Colleges is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.

(c) Subdivisions (a) and (b) shall not apply to any person who brings or possesses a knife having a blade longer than 3½ inches or a razor with an unguarded blade upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college at the direction of a faculty member of the private university, state university, or community college, or a certificated or classified employee of the school for use in a private university, state university, community college, or school-sponsored activity or class.

(d) Subdivisions (a) and (b) do not apply to any person who brings or possesses a knife having a blade longer than 3½ inches or a razor with an unguarded blade upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college for a lawful purpose within the scope of the person's employment.

(e) Subdivision (b) shall not apply to any person who brings or possesses a knife having a fixed blade longer than 3½ inches upon the grounds of, or within, any university, state university, or community college for lawful use in or around a residence or residential facility located upon those grounds or for lawful use in food preparation or consumption.

(f) Subdivision (a) shall not apply to any person who brings an instrument that expels a metallic projectile such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if the person has the written permission of the school principal or his or her designee.

(g) Any certificated or classified employee or school peace officer of a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, may seize any of the weapons described in subdivision (a), and any certificated or classified employee or school peace officer of any private university, state university, or community college may seize any of the weapons described in subdivision (b), from the possession of any person upon the grounds of, or within, the school if he or she knows, or has reasonable cause to know, the person is prohibited from bringing or possessing the weapon upon the grounds of, or within, the school.

SEC. 2. Section 626.10 of the Penal Code is amended to read:

626.10. (a) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, knife having a blade longer than 2½ inches, folding knife with a blade that locks into place, a razor with an unguarded blade, a taser, or a stun gun, as defined in subdivision (a) of Section 244.5, any instrument that expels a metallic projectile such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun, upon the grounds of, or within, any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.

(b) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, or knife having a fixed blade longer than 2½ inches upon the grounds of, or within, any private university, the University of California, the California State University, or the California Community Colleges is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.

(c) Subdivisions (a) and (b) shall not apply to any person who brings or possesses a knife having a blade longer than 2½ inches or a razor with an unguarded blade upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university,

or community college at the direction of a faculty member of the private university, state university, or community college, or a certificated or classified employee of the school for use in a private university, state university, community college, or school-sponsored activity or class.

(d) Subdivisions (a) and (b) do not apply to any person who brings or possesses an ice pick, a knife having a blade longer than 2½ inches, or a razor with an unguarded blade upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college for a lawful purpose within the scope of the person's employment.

(e) Subdivision (b) shall not apply to any person who brings or possesses an ice pick or a knife having a fixed blade longer than 2½ inches upon the grounds of, or within, any private university, state university, or community college for lawful use in or around a residence or residential facility located upon those grounds or for lawful use in food preparation or consumption.

(f) Subdivision (a) shall not apply to any person who brings an instrument that expels a metallic projectile such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if the person has the written permission of the school principle or his or her designee.

(g) Any certificated or classified employee or school peace officer of a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, may seize any of the weapons described in subdivision (a), and any certificated or classified employee or school peace officer of any private university, state university, or community college may seize any of the weapons described in subdivision (b), from the possession of any person upon the grounds of, or within, the school if he or she knows, or has reasonable cause to know, the person is prohibited from bringing or possessing the weapon upon the grounds of, or within, the school.

(h) As used in this section, "dirk" or dagger" means a knife or other instrument with or without a handguard that is primarily designed, constructed, or altered to be a stabbing instrument designed to inflict great bodily injury or death.

SEC. 3. Section 2 of this bill incorporates amendments to Section 626.10 of the Penal Code proposed by both this bill and SB 292. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 626.10 of the Penal Code, and (3) this bill is enacted after SB 292, in which case Section 1 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction,

changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 600

An act to amend Section 12021 of the Penal Code, relating to firearms.

[Approved by Governor September 29, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 12021 of the Penal Code is amended to read:

12021. (a) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 136.5, 140, 171b, 171c, 171d, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.2, 626.9, 646.9, subdivision (b) or (d) of Section 12034, subdivision (a) of Section 12100, 12320, or 12590 and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or

livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) of this section or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under subdivision (c) of this section no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

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

probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or an offense described in subdivision (b) of Section 1203.073, (2) is found to be a fit and proper subject to be dealt with under the juvenile court law, and (3) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or an offense described in subdivision (b) of Section 1203.073 shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a protective order as defined in Section 6218 of the Family Code, is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code. However, this subdivision does not apply if the firearm is received as part of the disposition of community property pursuant to Division 7 (commencing with Section 2500) of the Family Code.

SEC. 2. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any

other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 136.5, 140, 171b, 171c, 171d, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.2, 626.9, 646.9, subdivision (b) or (d) of Section 12034, subdivision (a) of Section 12100, 12320, or 12590 and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,

and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under subdivision (c) no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction prior to January 1, 1991, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraphs (2) or (3), shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

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

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or an offense described in subdivision (b) of Section 1203.073, (2) is found to be a fit and proper subject to be dealt with under the juvenile court law, and (3) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or an offense described in subdivision (b) of Section 1203.073 shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) Every person who purchases or receives, or attempts to

purchase or receive, a firearm knowing that he or she is subject to a protective order as defined in Section 6218 of the Family Code, is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code. However, this subdivision does not apply if the firearm is received as part of the disposition of community property pursuant to Division 7 (commencing with Section 2500) of the Family Code.

SEC. 3. Section 2 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and AB 685. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 12021 of the Penal Code, and (3) this bill is enacted after AB 685, in which case Section 1 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 601

An act to amend Section 186.22 of the Penal Code, relating to crimes.

[Approved by Governor September 29, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully

promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of the offenses occurred after the effective date of this chapter and the last of the offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section

211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances, as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Burglary, as defined in Section 459.

(9) Rape, as defined in Section 261.

(10) Looting, as defined in Section 463.

(11) Moneylaundering, as defined in Section 186.10.

(12) Kidnapping, as defined in Section 207.

(13) Mayhem, as defined in Section 203.

(14) Aggravated mayhem, as defined in Section 205.

(15) Torture, as defined in Section 206.

(16) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).

(17) Felony extortion, as defined in Sections 518 and 520.

(18) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(19) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (19), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall become operative on January 1, 1993.

(h) This section shall remain in effect only until January 1, 1997, and on that date is repealed, unless a later enacted statute which is enacted before January 1, 1997, deletes or extends that date.

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

operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 602

An act to amend Section 12021.1 of the Penal Code, relating to criminal street gangs.

[Approved by Governor September 29, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding the provisions of subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

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

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, which has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any felony violation of Section 186.22.

(26) Any attempt to commit a crime listed in this subdivision other than an assault.

(27) Any offense enumerated in Section 12001.6.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

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

SEC. 1.5. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at

least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

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

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, which has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any felony violation of Section 186.22.

(26) Any attempt to commit a crime listed in this subdivision other than an assault.

(27) Any offense enumerated in Section 12001.6.

(28) Carjacking.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who

owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

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

SEC. 1.6. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding the provisions of subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

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

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any felony violation of Section 186.22.

(26) Any attempt to commit a crime listed in this subdivision other than an assault.

(27) Any offense enumerated in Section 12001.6.

(28) Premises invasion of the first degree.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 1.7. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a

condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

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

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any felony violation of Section 186.22.

(26) Any attempt to commit a crime listed in this subdivision other than an assault.

(27) Any offense enumerated in Section 12001.6.

(28) Carjacking.

(29) Premises invasion of the first degree.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the

juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 1.8. (a) Section 1.5 of this bill incorporates amendments to Section 12021.1 of the Penal Code proposed by both this bill and SB 60. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 12021.1 of the Penal Code, (3) AB 1957 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 60, in which case Section 12021.1 of the Penal Code, as amended by SB 60, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative and Sections 1, 1.6, and 1.7 of this bill shall not become operative.

(b) Section 1.6 of this bill incorporates amendments to Section 12021.1 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 12021.1 of the Penal Code, (3) SB 60 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1957, in which case Sections 1, 1.5, and 1.7 of this bill shall not become operative.

(c) Section 1.7 of this bill incorporates amendments to Section 12021.1 of the Penal Code proposed by this bill, SB 60, and AB 1957. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 12021.1 of the Penal Code, and (3) this bill is enacted after SB 60 and AB 1957, in which case Section 12021.1 of the Penal Code, as amended by SB 60, shall remain operative only until the operative date of this bill, at which time Section 1.7 of this bill shall become operative and Sections 1, 1.5, and 1.6 of this bill shall not become operative.

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

changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 603

An act to amend Sections 1203.1 and 4024.2 of the Penal Code, relating to corrections.

[Approved by Governor September 29, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 1203.1 of the Penal Code is amended to read:

1203.1. (a) The court or judge thereof, in the order granting probation, may suspend the imposing, or the execution, of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case.

However, where the maximum possible term of the sentence is five years or less, then the period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years, and the following shall apply:

(1) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case.

(2) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither.

(3) The court shall provide for restitution in proper cases.

(4) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation.

(b) The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. Any restitution payment received by a probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received by the department, provided, that payment need not be forwarded to a

victim until 180 days from the date the first payment is received, if the restitution payments for that victim received by the probation department total less than fifty dollars ($50). In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple victims when it is cost effective to do so, but in no event shall restitution disbursements be delayed beyond 180 days from the date the payment is received by the probation department.

(c) In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in the road camp, farm, or other public work instead of in jail. In this case, Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county.

(d) In all cases of probation the court may require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report them to the probation officer and apply those earnings as directed by the court.

(e) The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

(f) In all cases in which, as a condition of probation, a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve his or her sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

(g) The probation officer or his or her designated representative shall consider whether any defendant who has been convicted of a nonviolent and nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the performance of repairs to senior centers through contact with local senior service organizations in the performance of the community service.

(h) Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or

education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

(i) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all of these terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation. However, upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, those of each probationer shall be taken and a record of them kept and preserved.

(j) Notwithstanding any other provisions of law to the contrary, except as provided in Sections 13967 and 13967.5 of the Government Code and Sections 1202.4, 1203.04, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund for the use and benefit of the county.

(k) If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 10 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 2. Section 4024.2 of the Penal Code is amended to read:

4024.2. (a) Notwithstanding any other law, the board of supervisors of any county may authorize the sheriff or other official in charge of county correctional facilities to offer a voluntary program under which any person committed to the facility may participate in a work release program pursuant to criteria described in subdivision (b), in which one day of participation will be in lieu of one day of confinement.

(b) The criteria for a work release program are the following:

(1) The work release program shall consist of any of the following:

(A) Manual labor to improve or maintain levees or public facilities, including, but not limited to, streets, parks, and schools.

(B) Manual labor in support of nonprofit organizations, as approved by the sheriff or other official in charge of the correctional facilities. As a condition of assigning participants of a work release program to perform manual labor in support of nonprofit organizations pursuant to this section, the board of supervisors shall obtain workers' compensation insurance which shall be adequate to cover work-related injuries incurred by those participants, in accordance with Section 3363.5 of the Labor Code.

(C) Performance of repairs to senior centers through contact with local senior service organizations, as approved by the sheriff or other official in charge of the correctional facilities. Where a work release participant has been assigned to such a task, the sheriff or other official shall agree upon in advance with the senior service organization about the type of services to be rendered by the participant and the extent of contact permitted between the recipients of these services and the participant.

(2) The sheriff or other official may permit a prisoner participating in a work release program to receive work release credit for participation in education, vocational training, or substance abuse programs in lieu of performing labor in a work release program on an hour-for-hour basis. However, credit for that participation may not exceed one-half of the hours established for the work release program, and the remaining hours shall consist of manual labor described in paragraph (1).

(3) The work release program shall be under the direction of a responsible person appointed by the sheriff or other official in charge.

(4) The hours of labor to be performed pursuant to this section shall be uniform for all persons committed to a facility in a county and may be determined by the sheriff or other official in charge of county correctional facilities, and each day shall be a minimum of 8 and a maximum of 10 hours, in accordance with the normal working hours of county employees assigned to supervise the programs. However, reasonable accommodation may be made for participation in a program under paragraph (2).

As used in this section, "nonprofit organizations" means organizations established or operated for the benefit of the public or in support of a significant public interest, as set forth in Section 501(c)(3) of the Internal Revenue Code. Organizations established or operated for the primary purpose of benefiting their own memberships are specifically excluded.

(c) The board of supervisors may prescribe reasonable rules and regulations under which a work release program is operated and may provide that participants wear clothing of a distinctive character while performing the work. As a condition of participating in a work release program, a person shall give his or her promise to appear for

work or assigned activity by signing a notice to appear before the sheriff or at the education, vocational, or substance abuse program at a time and place specified in the notice and shall sign an agreement that the sheriff may immediately retake the person into custody to serve the balance of his or her sentence if the person fails to appear for the program at the time and place agreed to, does not perform the work or activity assigned, or for any other reason is no longer a fit subject for release under this section. A copy of the notice shall be delivered to the person and a copy shall be retained by the sheriff. Any person who willfully violates his or her written promise to appear at the time and place specified in the notice is guilty of a misdemeanor.

Whenever a peace officer has reasonable cause to believe the person has failed to appear at the time and place specified in the notice or fails to appear or work at the time and place agreed to or has failed to perform the work assigned, the peace officer may, without a warrant, retake the person into custody, or the court may issue an arrest warrant for the retaking of the person into custody, to complete the remainder of the original sentence. A peace officer may not retake a person into custody under this subdivision, without a warrant for arrest, unless the officer has a written order to do so, signed by the sheriff or other person in charge of the program, which describes with particularity the person to be retaken.

(d) Nothing in this section shall be construed to require the sheriff or other official in charge to assign a person to a program pursuant to this section if it appears from the record that the person has refused to satisfactorily perform as assigned or has not satisfactorily complied with the reasonable rules and regulations governing the assignment or any other order of the court.

A person shall be eligible for work release under this section only if the sheriff or other official in charge concludes that the person is a fit subject therefor.

(e) The board of supervisors may prescribe a program administrative fee, not to exceed the pro rata cost of administration, to be paid by each person according to his or her ability to pay.

SEC. 3. Section 4024.2 of the Penal Code is amended to read:

4024.2. (a) Notwithstanding any other law, the board of supervisors of any county may authorize the sheriff or other official in charge of county correctional facilities to offer a voluntary program under which any person committed to the facility may participate in a work release program pursuant to criteria described in subdivision (b), in which one day of participation will be in lieu of one day of confinement.

(b) The criteria for a work release program are the following:

(1) The work release program shall consist of any of the following:

(A) Manual labor to improve or maintain levees or public facilities, including, but not limited to, streets, parks, and schools.

(B) Manual labor in support of nonprofit organizations, as approved by the sheriff or other official in charge of the correctional

facilities. As a condition of assigning participants of a work release program to perform manual labor in support of nonprofit organizations pursuant to this section, the board of supervisors shall obtain workers' compensation insurance which shall be adequate to cover work-related injuries incurred by those participants, in accordance with Section 3363.5 of the Labor Code.

(C) Performance of repairs to senior centers through contact with local senior service organizations, as approved by the sheriff or other official in charge of the correctional facilities. Where a work release participant has been assigned to such a task, the sheriff or other official shall agree upon in advance with the senior service organization about the type of services to be rendered by the participant and the extent of contact permitted between the recipients of these services and the participant.

(D) Any person who is not able to perform manual labor as specified in this paragraph because of a medical condition, physical disability, or age, may participate in a work release program involving any other type of public sector work that is designated and approved by the sheriff or other official in charge of county correctional facilities.

(2) The sheriff or other official may permit a prisoner participating in a work release program to receive work release credit for participation in education, vocational training, or substance abuse programs in lieu of performing labor in a work release program on an hour-for-hour basis. However, credit for that participation may not exceed one-half of the hours established for the work release program, and the remaining hours shall consist of labor described in paragraph (1).

(3) The work release program shall be under the direction of a responsible person appointed by the sheriff or other official in charge.

(4) The hours of labor to be performed pursuant to this section shall be uniform for all persons committed to a facility in a county and may be determined by the sheriff or other official in charge of county correctional facilities, and each day shall be a minimum of 8 and a maximum of 10 hours, in accordance with the normal working hours of county employees assigned to supervise the programs. However, reasonable accommodation may be made for participation in a program under paragraph (2).

As used in this section, "nonprofit organizations" means organizations established or operated for the benefit of the public or in support of a significant public interest, as set forth in Section 501(c)(3) of the Internal Revenue Code. Organizations established or operated for the primary purpose of benefiting their own memberships are specifically excluded.

(c) The board of supervisors may prescribe reasonable rules and regulations under which a work release program is operated and may provide that participants wear clothing of a distinctive character while performing the work. As a condition of participating in a work

release program, a person shall give his or her promise to appear for work or assigned activity by signing a notice to appear before the sheriff or at the education, vocational, or substance abuse program at a time and place specified in the notice and shall sign an agreement that the sheriff may immediately retake the person into custody to serve the balance of his or her sentence if the person fails to appear for the program at the time and place agreed to, does not perform the work or activity assigned, or for any other reason is no longer a fit subject for release under this section. A copy of the notice shall be delivered to the person and a copy shall be retained by the sheriff. Any person who willfully violates his or her written promise to appear at the time and place specified in the notice is guilty of a misdemeanor.

Whenever a peace officer has reasonable cause to believe the person has failed to appear at the time and place specified in the notice or fails to appear or work at the time and place agreed to or has failed to perform the work assigned, the peace officer may, without a warrant, retake the person into custody, or the court may issue an arrest warrant for the retaking of the person into custody, to complete the remainder of the original sentence. A peace officer may not retake a person into custody under this subdivision, without a warrant for arrest, unless the officer has a written order to do so, signed by the sheriff or other person in charge of the program, that describes with particularity the person to be retaken.

(d) Nothing in this section shall be construed to require the sheriff or other official in charge to assign a person to a program pursuant to this section if it appears from the record that the person has refused to satisfactorily perform as assigned or has not satisfactorily complied with the reasonable rules and regulations governing the assignment or any other order of the court.

A person shall be eligible for work release under this section only if the sheriff or other official in charge concludes that the person is a fit subject therefor.

(e) The board of supervisors may prescribe a program administrative fee, not to exceed the pro rata cost of administration, to be paid by each person according to his or her ability to pay.

SEC. 4. Section 3 of this bill incorporates amendments to Section 4024.2 of the Penal Code proposed by both this bill and AB 381. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 4024.2 of the Penal Code, and (3) this bill is enacted after AB 381, in which case Section 2 of this bill shall not become operative.

CHAPTER 604

An act to amend Section 594.1 of the Penal Code, relating to graffiti.

[Approved by Governor September 29, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 594.1 of the Penal Code is amended to read:

594.1. (a) (1) It shall be unlawful for any person, firm, or corporation, except a parent or legal guardian, to sell or give or in any way furnish to another person, who is in fact under the age of 18 years, any aerosol container of paint that is capable of defacing property without first obtaining bona fide evidence of majority and identity.

(2) For purposes of this subdivision, "bona fide evidence of majority and identity" is any document evidencing the age and identity of an individual which has been issued by a federal, state, or local governmental entity, and includes, but is not limited to, a motor vehicle operator's license, a registration certificate issued under the federal Selective Service Act, or an identification card issued to a member of the armed forces.

(3) This subdivision shall not apply to the furnishing of six ounces or less of an aerosol container of paint to a minor for the minor's use or possession under the supervision of the minor's parent, guardian, instructor, or employer.

(4) Aerosol containers of paint or related substances may be furnished for use in school-related activities that are part of the instructional program when used under controlled and supervised situations within the classroom or on the site of a supervised project. These containers may not leave the supervised site and shall be inventoried by the instructor. This use shall comply with Section 32060 of the Education Code regarding the safe use of toxic art supplies in schools.

(b) It shall be unlawful for any person under the age of 18 years to purchase an aerosol container of paint that is capable of defacing property.

(c) Every retailer selling or offering for sale in this state aerosol containers of paint capable of defacing property shall post in a conspicuous place a sign in letters at least three-eighths of an inch high stating: "Any person who maliciously defaces real or personal property with paint is guilty of vandalism which is punishable by a fine, imprisonment, or both."

(d) It is unlawful for any person to carry on his or her person and in plain view to the public an aerosol container of paint while in any posted public facility, park, playground, swimming pool, beach, or recreational area, other than a highway, street, alley, or way, unless

he or she has first received valid authorization from the governmental entity which has jurisdiction over the public area.

As used in this subdivision, "posted" means a sign placed in a reasonable location or locations stating it is a misdemeanor to possess a spray can of paint in that public facility, park, playground, swimming pool, beach, or recreational area without valid authorization.

(e) It is unlawful for any person under the age of 18 years to possess an aerosol container of paint for the purpose of defacing property while on any public highway, street, alley, or way, or other public place, regardless of whether that person is or is not in any automobile, vehicle, or other conveyance.

(f) Violation of any provision of this section is a misdemeanor.

CHAPTER 605

An act to amend Sections 417, 550, 594, 594.1, 640.5, 640.6, 1203.1, and 4024.2 of, and to add Sections 594.2, 594.6, and 640.7 to, the Penal Code, and to amend Section 13202.6 of the Vehicle Code, relating to vandalism.

[Approved by Governor September 29, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. This act shall be known and may be cited as "The 1993 California Graffiti Omnibus Bill."

SEC. 2. Section 417 of the Penal Code is amended to read:

417. (a) (1) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any deadly weapon whatsoever, other than a firearm, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses the same in any fight or quarrel is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than 30 days. Every person who violates this section when the other person is in the process of cleaning up graffiti or vandalism is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than 30 days nor more than one year.

(2) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses the same in any fight or quarrel is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than three months. Every person who violates this section when the other person is in the process of cleaning up graffiti or vandalism is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than three months nor more than one year.

(b) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any loaded firearm in a rude, angry, or threatening manner, or who, in any manner, unlawfully uses any loaded firearm in any fight or quarrel upon the grounds of any day care center, as defined in Section 1596.76 of the Health and Safety Code, or any facility where programs, including day care programs or recreational programs, are being conducted for persons under 18 years of age, including programs conducted by a nonprofit organization, during the hours in which the center or facility is open for use, shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not less than three months, nor more than one year.

(c) Every person who, in the immediate presence of a peace officer, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner, and who knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, and that peace officer is engaged in the performance of his or her duties is guilty of a felony, punishable by imprisonment in a county jail for not less than nine months and not to exceed one year, or in the state prison.

As used in this section, "peace officers" refers to any person designated as a peace officer by Section 830.1, Section 830.2, subdivision (a) of Section 830.3, or Section 830.5.

SEC. 2.5. Section 417 of the Penal Code is amended to read:

417. (a) (1) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any deadly weapon whatsoever, other than a firearm, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses the same in any fight or quarrel is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than 30 days. Every person who violates this section when the other person is in the process of cleaning up graffiti or vandalism is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than three months nor more than one year.

(2) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses the same in any fight or quarrel is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than three months. Every person who violates this section when the other person is in the process of cleaning up graffiti or vandalism is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than three months nor more than one year.

(b) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any loaded firearm in a rude, angry, or threatening manner, or who, in any manner, unlawfully uses any loaded firearm in any fight or quarrel upon the grounds of any day care center, as defined in Section 1596.76 of the Health and Safety Code, or any facility where programs, including day care

programs or recreational programs, are being conducted for persons under 18 years of age, including programs conducted by a nonprofit organization, during the hours in which the center or facility is open for use, shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not less than three months, nor more than one year.

(c) Every person who, in the immediate presence of a peace officer, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner, and who knows, or reasonably should know, by the officer's uniformed appearance or other action of identification by the officer, that he or she is a peace officer engaged in the performance of his or her duties, and that peace officer is engaged in the performance of his or her duties is guilty of a felony, punishable by imprisonment in a county jail for not less than nine months and not to exceed one year, or in the state prison.

As used in this section, "peace officers" means any person designated as a peace officer by Section 830.1, 830.2, subdivision (a) of Section 830.3, or Section 830.31, 830.32, 830.33, or 830.5.

SEC. 3. Section 550 of the Penal Code, as amended by Chapter 120 of the Statutes of 1993, is amended to read:

550. (a) It is unlawful to do any of the following:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss, including payment of a loss under a contract of insurance.

(2) Knowingly present multiple claims for the same loss or injury, including presentation of multiple claims to more than one insurer, with an intent to defraud.

(3) Knowingly cause or participate in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim.

(4) Knowingly present a false or fraudulent claim for the payments of a loss for theft, destruction, damage, or conversion of a motor vehicle, a motor vehicle part, or contents of a motor vehicle.

(5) Knowingly prepare, make, or subscribe any writing, with the intent to present or use it, or to allow it to be presented in support of any false or fraudulent claim.

(6) Knowingly assist, abet, solicit, or conspire with any person described as follows:

(A) Any person who knowingly presents any false or fraudulent claim for the payment of a loss, including payment of a loss under a contract of insurance.

(B) Any person who knowingly presents multiple claims for the same loss or injury, including presentation of multiple claims to more than one insurer, with an intent to defraud.

(C) Any person who knowingly causes or participates in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim.

(D) Any person who knowingly prepares, makes, or subscribes

any writing, with the intent to present or use it, or to allow it to be presented in support on any claim.

(7) Knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit.

(8) Knowingly submit a claim for a health care benefit which was not used by, or on behalf of, the claimant.

(9) Knowingly present multiple claims for payment of the same health care benefit with an intent to defraud.

(10) Knowingly present for payment any undercharges for health care benefits on behalf of a specific claimant unless any known overcharges for health care benefits for that claimant are presented for reconciliation at that same time.

(11) For purposes of paragraphs (7) to (10), inclusive, a claim or a claim for payment of a health care benefit also means a claim or claim for payment submitted by or on the behalf of a provider of any workers' compensation health benefits under the Labor Code.

(b) (1) Every person who violates paragraph (1), (2), (3), (4), (5), or (6) of subdivision (a) shall be punished by imprisonment in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars ($50,000), or by both that imprisonment and fine, unless the value of the fraud is fifty thousand dollars ($50,000) or more. Whenever the value of the fraud is fifty thousand dollars ($50,000) or more, the fine may be double the amount of the value of the fraud.

(2) Every person who violates paragraph (7), (8), (9), or (10) of subdivision (a) is guilty of a public offense.

(A) Where the claim or amount at issue exceeds four hundred dollars ($400), the offense is punishable by imprisonment in the state prison for two, three, or five years, by a fine not exceeding fifty thousand dollars ($50,000), or by both that imprisonment and fine, unless the value of the fraud exceeds fifty thousand dollars ($50,000), in which event the fine may not exceed the value of the fraud, or by imprisonment in a county jail not to exceed one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(B) Where the claim or amount at issue is four hundred dollars ($400) or less, the offense is punishable by imprisonment in a county jail not to exceed six months, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine unless the aggregate amount of the claims or amount at issue exceeds four hundred dollars ($400) in any 12 consecutive month period, in which case the claims or amounts may be charged as in subparagraph (A).

(c) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of a sentence be suspended for, any adult person convicted of felony violations of this section who previously has been convicted of felony violations of this section as an adult under charges separately brought and tried two or more times. The existence of any fact which would make a person ineligible for probation under this subdivision shall be alleged

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

Except where the existence of the fact was not admitted or found to be true or the court finds that a prior felony conviction was invalid, the court shall not strike or dismiss any prior felony convictions alleged in the information or indictment.

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

(d) Any person who violates subdivision (a) and who has a prior felony conviction of the offense set forth in that subdivision or in Section 548 shall receive a two-year enhancement for each prior felony conviction in addition to the sentence provided in subdivision (b). The existence of any fact which would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(e) This section shall not be construed to preclude the applicability of any other provision of criminal law that applies or may apply to any transaction.

SEC. 4. Section 594 of the Penal Code is amended to read:

594. (a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases otherwise than those specified by state law, is guilty of vandalism:

(1) Sprays, scratches, writes on, or otherwise defaces.

(2) Damages.

(3) Destroys.

Whenever a person violates paragraph (1) with respect to real property belonging to any public entity, as defined by Section 811.2 of the Government Code, or real property belonging to the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(b) (1) If the amount of defacement, damage, or destruction is fifty thousand dollars ($50,000) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine of not more than fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(2) If the amount of defacement, damage, or destruction is five thousand dollars ($5,000) or more but less than fifty thousand dollars ($50,000), vandalism is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine of not

more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(3) If the amount of defacement, damage, or destruction is one thousand dollars ($1,000) or more but less than five thousand dollars ($5,000), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(4) If the amount of defacement, damage, or destruction is less than one thousand dollars ($1,000), vandalism is punishable by imprisonment in a county jail for not more than six months, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(c) Upon conviction of any person under this section for acts of vandalism consisting of writing graffiti, the court may, in addition to any punishment imposed under subdivision (b), at the victim's option, order the defendant to either clean up and repair the damaged property himself or herself, or to pay for someone else to do so.

SEC. 5. Section 594.1 of the Penal Code is amended to read:

594.1. (a) It shall be unlawful for any person, firm, or corporation, except a parent or legal guardian, to sell or give or in any way furnish to another person, who is in fact under the age of 18 years, any aerosol container of paint that is capable of defacing property without first obtaining bona fide evidence of majority and identity.

For purposes of this subdivision, "bona fide evidence of majority and identity" is any document evidencing the age and identity of an individual which has been issued by a federal, state, or local governmental entity, and includes, but is not limited to, a motor vehicle operator's license, a registration certificate issued under the federal Selective Service Act, or an identification card issued to a member of the armed forces.

This subdivision shall not apply to the furnishing of six ounces or less of an aerosol container of paint to a minor for the minor's use or possession under the supervision of the minor's parent, guardian, instructor, or employer.

(b) It shall be unlawful for any person under the age of 18 years to purchase an aerosol container of paint that is capable of defacing property.

(c) Every retailer selling or offering for sale in this state aerosol containers of paint capable of defacing property shall post in a conspicuous place a sign in letters at least three-eighths of an inch high stating: "Any person who maliciously defaces real or personal property with paint is guilty of vandalism which is punishable by a fine, imprisonment, or both."

(d) It is unlawful for any person to carry on his or her person and in plain view to the public an aerosol container of paint while in any posted public facility, park, playground, swimming pool, beach, or recreational area, other than a highway, street, alley, or way, unless

he or she has first received valid authorization from the governmental entity which has jurisdiction over the public area.

As used in this subdivision "posted" means a sign placed in a reasonable location or locations stating it is a misdemeanor to possess a spray can of paint in that public facility, park, playground, swimming pool, beach, or recreational area without valid authorization.

(e) (1) It is unlawful for any person under the age of 18 years to possess an aerosol container of paint for the purpose of defacing property while on any public highway, street, alley, or way, or other public place, regardless of whether that person is or is not in any automobile, vehicle, or other conveyance.

(2) As a condition of probation for any violation of this subdivision, the court may order a defendant convicted of a violation of this subdivision to perform community service as follows:

(A) For a first conviction under this subdivision, community service not to exceed 100 hours over a period not to exceed 90 days during a time other than during his or her hours of school attendance or employment.

(B) If the person has a prior conviction under this subdivision, community service not to exceed 200 hours over a period of 180 days during a time other than during his or her hours of school attendance or employment.

(C) If the person has two prior convictions under this subdivision, community service not to exceed 300 hours over a period not to exceed 240 days during a time other than during his or her hours of school attendance or employment.

(f) A violation of this section is a misdemeanor.

SEC. 5.5. Section 594.1 of the Penal Code is amended to read:

594.1. (a) (1) It shall be unlawful for any person, firm, or corporation, except a parent or legal guardian, to sell or give or in any way furnish to another person, who is in fact under the age of 18 years, any aerosol container of paint that is capable of defacing property without first obtaining bona fide evidence of majority and identity.

(2) For purposes of this subdivision, "bona fide evidence of majority and identity" is any document evidencing the age and identity of an individual which has been issued by a federal, state, or local governmental entity, and includes, but is not limited to, a motor vehicle operator's license, a registration certificate issued under the federal Selective Service Act, or an identification card issued to a member of the armed forces.

(3) This subdivision shall not apply to the furnishing of six ounces or less of an aerosol container of paint to a minor for the minor's use or possession under the supervision of the minor's parent, guardian, instructor, or employer.

(4) Aerosol containers of paint or related substances may be furnished for use in school-related activities that are part of the instructional program when used under controlled and supervised

situations within the classroom or on the site of a supervised project. These containers may not leave the supervised site and shall be inventoried by the instructor. This use shall comply with Section 32060 of the Education Code regarding the safe use of toxic art supplies in schools.

(b) It shall be unlawful for any person under the age of 18 years to purchase an aerosol container of paint that is capable of defacing property.

(c) Every retailer selling or offering for sale in this state aerosol containers of paint capable of defacing property shall post in a conspicuous place a sign in letters at least three-eighths of an inch high stating: "Any person who maliciously defaces real or personal property with paint is guilty of vandalism which is punishable by a fine, imprisonment, or both."

(d) It is unlawful for any person to carry on his or her person and in plain view to the public an aerosol container of paint while in any posted public facility, park, playground, swimming pool, beach, or recreational area, other than a highway, street, alley, or way, unless he or she has first received valid authorization from the governmental entity which has jurisdiction over the public area.

As used in this subdivision, "posted" means a sign placed in a reasonable location or locations stating it is a misdemeanor to possess a spray can of paint in that public facility, park, playground, swimming pool, beach, or recreational area without valid authorization.

(e) (1) It is unlawful for any person under the age of 18 years to possess an aerosol container of paint for the purpose of defacing property while on any public highway, street, alley, or way, or other public place, regardless of whether that person is or is not in any automobile, vehicle, or other conveyance.

(2) As a condition of probation for any violation of this subdivision, the court may order a defendant convicted of a violation of this subdivision to perform community service as follows:

(A) For a first conviction under this subdivision, community service not to exceed 100 hours over a period not to exceed 90 days during a time other than during his or her hours of school attendance or employment.

(B) If the person has a prior conviction under this subdivision, community service not to exceed 200 hours over a period of 180 days during a time other than during his or her hours of school attendance or employment.

(C) If the person has two prior convictions under this subdivision, community service not to exceed 300 hours over a period not to exceed 240 days during a time other than during his or her hours of school attendance or employment.

(f) Violation of any provision of this section is a misdemeanor.

SEC. 6. Section 594.2 is added to the Penal Code, to read:

594.2. (a) Every person who possesses a masonry or glass drill bit, a carbide drill bit, a glass cutter, a grinding stone, an awl, a chisel, or

a carbide scribe with the intent to commit vandalism or graffiti, is guilty of a misdemeanor.

(b) As a condition of probation for any violation of this section, the court may order the defendant to perform community service not to exceed 90 hours during a time other than his or her hours of school attendance or employment.

SEC. 7. Section 594.6 is added to the Penal Code, to read:

594.6. Every person who, having been convicted previously of vandalism or affixing graffiti under Section 594, 640.5, 640.6, or 640.7, or any combination of these offenses, on two separate occasions, and having been incarcerated pursuant to a sentence, a conditional sentence, or a grant of probation for at least one of the convictions, is subsequently convicted of vandalism under Section 594, may be ordered by the court as a condition of probation to perform community service not to exceed 300 hours over a period not to exceed 240 days during a time other than during his or her hours of school attendance or employment.

SEC. 8. Section 640.5 of the Penal Code is amended to read:

640.5. (a) Any person who writes, sprays, scratches, or otherwise affixes graffiti on or in the facilities or vehicles of a governmental entity, as defined by Section 811.2 of the Government Code, or on or in the facilities or vehicles of a public transportation system as defined by Section 99211 of the Public Utilities Code, or on or in the facilities of or vehicles operated by entities subsidized by, the Department of Transportation, or on or in any leased or rented facilities or vehicles for which any of the above entities incur costs of less than two hundred fifty dollars ($250) for cleanup, repair, or replacement is guilty of an infraction punishable by a fine not to exceed two hundred fifty dollars ($250) and by community service for a total time not to exceed 100 hours over a period not to exceed 90 days, during a time other than during his or her hours of school attendance or employment. This subdivision does not preclude application of Section 594.

(b) If the person has been convicted previously of an infraction under subdivision (a) or has a prior conviction of Section 594, 640.6, or 640.7, the offense is a misdemeanor, punishable by imprisonment in a county jail not to exceed six months, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine. As a condition of probation, the court may order the defendant to perform community service not to exceed 200 hours over a period not to exceed 180 days during a time other than during his or her hours of school attendance or employment.

(c) Every person who, having been convicted previously under this section or Section 594, 640.6, or 640.7, or any combination of these offenses, on two separate occasions, and having been incarcerated pursuant to a sentence, a conditional sentence, or a grant of probation for at least one of the convictions, is subsequently convicted under this section, shall be punished by imprisonment in a county jail not to exceed one year. As a condition of probation, the

court may order the defendant to perform community service not to exceed 300 hours over a period not to exceed 240 days during a time other than during his or her hours of school attendance or employment.

(d) (1) Upon conviction of any person under subdivision (a), the court may, in addition to any punishment imposed pursuant to subdivision (a), (b), or (c), at the victim's option, order the defendant to perform the necessary labor to clean up, repair, or replace the property damaged by that person, but shall not order the person to pay for any related costs incurred by the cleanup, repair, or replacement of the property.

(2) If a minor is personally unable to pay any fine levied for violating subdivision (a), (b), or (c), the parent or legal guardian of the minor shall be liable for payment of the fine. A court may waive payment of the fine by the parent or legal guardian upon a finding of good cause.

(e) Any fine levied for a violation of subdivision (a), (b), or (c) shall be credited by the county treasurer pursuant to Section 1463.29 to the governmental entity having jurisdiction over, or responsibility for, the facility or vehicle involved, to be used for removal of the graffiti. Before crediting these fines to the appropriate governmental entity, the county may determine the administrative costs it has incurred pursuant to this section, and retain an amount equal to those costs.

Any community service which is required pursuant to subdivision (a), (b), or (c) of a person under the age of 18 years may be performed in the presence, and under the direct supervision, of the person's parent or legal guardian.

(f) As used in this section, graffiti means any form of unauthorized painting, writing, or inscription regardless of the content or nature of the material used in the commission of the act.

SEC. 8.5. Section 640.5 of the Penal Code is amended to read:

640.5. (a) Any person who writes, sprays, scratches, or otherwise affixes graffiti on or in the facilities or vehicles of a governmental entity, as defined by Section 811.2 of the Government Code, or on or in the facilities or vehicles of a public transportation system as defined by Section 99211 of the Public Utilities Code, or on or in the facilities of or vehicles operated by entities subsidized by, the Department of Transportation, or on or in any leased or rented facilities or vehicles for which any of the above entities incur costs of less than two hundred fifty dollars ($250) for cleanup, repair, or replacement is guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500) and by a minimum of 24 hours of community service for a total time not to exceed 100 hours over a period not to exceed 90 days, during a time other than during his or her hours of school attendance or employment. This subdivision does not preclude application of Section 594.

(b) If the person has been convicted previously of an infraction under subdivision (a) or has a prior conviction of Section 594, 640.6,

or 640.7, the offense is a misdemeanor, punishable by imprisonment in a county jail not to exceed six months, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine. As a condition of probation, the court shall order the defendant to perform a minimum of 48 hours of community service not to exceed 200 hours over a period not to exceed 180 days during a time other than during his or her hours of school attendance or employment.

(c) Every person who, having been convicted previously under this section or Section 594, 640.6, or 640.7, or any combination of these offenses, on two separate occasions, and having been incarcerated pursuant to a sentence, a conditional sentence, or a grant of probation for at least one of the convictions, is subsequently convicted under this section, shall be punished by imprisonment in a county jail not to exceed one year. As a condition of probation, the court may order the defendant to perform community service not to exceed 300 hours over a period not to exceed 240 days during a time other than during his or her hours of school attendance or employment.

(d) (1) Upon conviction of any person under subdivision (a), the court, in addition to any punishment imposed pursuant to subdivision (a), (b), or (c), at the victim's option, may order the defendant to perform the necessary labor to clean up, repair, or replace the property damaged by that person, but shall not order the person to pay for any related costs incurred by the cleanup, repair, or replacement of the property.

(2) If a minor is personally unable to pay any fine levied for violating subdivision (a), (b), or (c), the parent or legal guardian of the minor shall be liable for payment of the fine. A court may waive payment of the fine by the parent or legal guardian upon a finding of good cause.

(e) Any fine levied for a violation of subdivision (a), (b), or (c) shall be credited by the county treasurer pursuant to Section 1463.29 to the governmental entity having jurisdiction over, or responsibility for, the facility or vehicle involved, to be used for removal of the graffiti. Before crediting these fines to the appropriate governmental entity, the county may determine the administrative costs it has incurred pursuant to this section, and retain an amount equal to those costs.

Any community service which is required pursuant to subdivision (a), (b), or (c) of a person under the age of 18 years may be performed in the presence, and under the direct supervision, of the person's parent or legal guardian.

(f) As used in this section, graffiti means any form of unauthorized painting, writing, or inscription regardless of the content or nature of the material used in the commission of the act.

SEC. 9. Section 640.6 of the Penal Code is amended to read:

640.6. (a) Except as provided in Section 640.5, any person who writes, sprays, scratches, or otherwise affixes graffiti on any real or personal property not his or her own is guilty of an infraction

punishable by a fine not to exceed two hundred fifty dollars ($250) if the amount of the defacement, damage, or destruction is less than two hundred fifty dollars ($250). This subdivision does not preclude application of Section 594.

In addition to the penalty set forth in this section, the court may order the defendant to perform community service not to exceed 100 hours over a period not to exceed 90 days during a time other than during his or her hours of school attendance or employment.

(b) If the person has been convicted previously of an infraction under subdivision (a) or has a prior conviction of Section 594, 640.5, or 640.7, the offense is a misdemeanor, punishable by not to exceed six months in a county jail, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine. As a condition of probation, the court may order the defendant to perform community service not to exceed 200 hours over a period not to exceed 180 days during a time other than during his or her hours of school attendance or employment.

(c) Every person who, having been convicted previously under this section or Section 594, 640.5, or 640.7, or any combination of these offenses, on two separate occasions, and having been incarcerated pursuant to a sentence, a conditional sentence, or a grant of probation for at least one of the convictions, is subsequently convicted under this section, shall be punished by imprisonment in a county jail not to exceed one year. As a condition of probation, the court may order the defendant to perform community service not to exceed 300 hours over a period not to exceed 240 days during a time other than during his or her hours of school attendance or employment.

(d) Upon conviction of any person under subdivision (a), the court may, in addition to any punishment imposed pursuant to subdivision (a), (b), or (c), at the victim's option, order the defendant to perform the necessary labor to clean up, repair, or replace the property damaged by that person, but shall not order the person to pay for any related costs incurred by the cleanup, repair, or replacement of the property.

(e) If a minor is personally unable to pay any fine levied for violating subdivision (a), (b), or (c), the parent or legal guardian of the minor shall be liable for payment of the fine. A court may waive payment of the fine by the parent or legal guardian upon a finding of good cause.

Any community service which is required pursuant to subdivision (a), (b), or (c) of a person under the age of 18 years may be performed in the presence, and under the direct supervision, of the person's parent or legal guardian.

(f) As used in this section, graffiti means any form of unauthorized painting, writing, or inscription regardless of the content or nature of the material used in the commission of the act.

SEC. 9.5. Section 640.6 of the Penal Code is amended to read:

640.6. (a) Except as provided in Section 640.5, any person who

writes, sprays, scratches, or otherwise affixes graffiti on any real or personal property not his or her own, when the amount of the defacement, damage, or destruction is less than two hundred fifty dollars ($250), is guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500). This subdivision does not preclude application of Section 594.

In addition to the penalty set forth in this section, the court shall order the defendant to perform a minimum of 24 hours of community service not to exceed 100 hours over a period not to exceed 90 days during a time other than during his or her hours of school attendance or employment.

(b) If the person has been convicted previously of an infraction under subdivision (a) or has a prior conviction of Section 594, 640.5, or 640.7, the offense is a misdemeanor, punishable by not to exceed six months in a county jail, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine. As a condition of probation, the court shall order the defendant to perform a minimum of 48 hours of community service not to exceed 200 hours over a period not to exceed 180 days during a time other than during his or her hours of school attendance or employment.

(c) Every person who, having been convicted previously under this section or Section 594, 640.5, or 640.7, or any combination of these offenses, on two separate occasions, and having been incarcerated pursuant to a sentence, a conditional sentence, or a grant of probation for at least one of the convictions, is subsequently convicted under this section, shall be punished by imprisonment in a county jail not to exceed one year. As a condition of probation, the court may order the defendant to perform community service not to exceed 300 hours over a period not to exceed 240 days during a time other than during his or her hours of school attendance or employment.

(d) Upon conviction of any person under subdivision (a), the court, in addition to any punishment imposed pursuant to subdivision (a), (b), or (c), at the victim's option, may order the defendant to perform the necessary labor to clean up, repair, or replace the property damaged by that person, but shall not order the person to pay for any related costs incurred by the cleanup, repair, or replacement of the property.

(e) If a minor is personally unable to pay any fine levied for violating subdivision (a), (b), or (c), the parent or legal guardian of the minor shall be liable for payment of the fine. A court may waive payment of the fine by the parent or legal guardian upon a finding of good cause.

Any community service which is required pursuant to subdivision (a), (b), or (c) of a person under the age of 18 years may be performed in the presence, and under the direct supervision, of the person's parent or legal guardian.

(f) As used in this section, graffiti means any form of unauthorized painting, writing, or inscription regardless of the content or nature

of the material used in the commission of the act.

SEC. 10. Section 640.7 is added to the Penal Code, to read:

640.7. (a) Any person who violates Section 640.5, 640.6, or 594 on or within 100 feet of a highway, or its appurtenances, including, but not limited to, guardrails, signs, traffic signals, snow poles, and similar facilities, excluding signs naming streets, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. A second conviction is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(b) As a condition of probation, the court may order the defendant to perform community service not to exceed 100 hours over a period not to exceed 90 days during a time other than during his or her hours of school attendance or employment. If the person has been convicted previously of this offense, the court may, in addition, order the defendant to perform community service not to exceed 200 hours over a period not to exceed 180 days during a period other than during his or her hours of school attendance or employment. If the person has been convicted twice previously of this offense, the court, in addition, may order the defendant to perform community service not to exceed 300 hours over a period not to exceed 240 days.

SEC. 11. Section 1203.1 of the Penal Code is amended to read:

1203.1. (a) The court, or judge thereof, in the order granting probation, may suspend the imposing, or the execution, of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case.

However, where the maximum possible term of the sentence is five years or less, then the period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years. The following shall apply to this subdivision:

(1) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case.

(2) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither.

(3) The court shall provide for restitution in proper cases.

(4) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation.

(b) The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. Any restitution payment received by a probation department in the form of cash or money order shall be forwarded to the victim

within 30 days from the date the payment is received by the department. Any restitution payment received by a probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received by the department, provided, that payment need not be forwarded to a victim until 180 days from the date the first payment is received, if the restitution payments for that victim received by the probation department total less than fifty dollars ($50). In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple victims when it is cost effective to do so, but in no event shall restitution disbursements be delayed beyond 180 days from the date the payment is received by the probation department.

(c) In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in the road camp, farm, or other public work instead of in jail. In this case, Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county.

(d) In all cases of probation the court may require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report them to the probation officer and apply those earnings as directed by the court.

(e) The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

(f) In all cases in which, as a condition of probation a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve his or her sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

(g) (1) The court and prosecuting attorney shall consider whether any defendant who has been convicted of a nonviolent or nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the removal of graffiti in the performance of the community service. For the purpose of this subdivision, a nonserious offense shall not include the

following:

(A) Offenses in violation of the Dangerous Weapons' Control Law (Chapter 1 (commencing with Section 12000) of Title 2 of Part 4).

(B) Offenses involving the use of a dangerous or deadly weapon, including all violations of Section 417.

(C) Offenses involving the use or attempted use of violence against the person of another or involving injury to a victim.

(D) Offenses involving annoying or molesting children.

(2) The court and the prosecuting attorney need not consider a defendant pursuant to paragraph (1) if the following circumstances exist:

(A) The defendant was convicted of any offense set forth in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) The judge believes that the public safety may be endangered if the person is ordered to do community service or the judge believes that the facts or circumstances or facts and circumstances call for imposition of a more substantial penalty.

(h) Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

(i) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation. However, upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, those of each probationer shall be taken and a record of them kept and preserved.

(j) Notwithstanding any other provisions of law to the contrary,

except as provided in Sections 13967 and 13967.5 of the Government Code and Sections 1202.4, 1203.04, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund for the use and benefit of the county.

(k) If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 10 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 11.5. Section 1203.1 of the Penal Code is amended to read:

1203.1. (a) The court, or judge thereof, in the order granting probation, may suspend the imposing, or the execution, of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case.

However, where the maximum possible term of the sentence is five years or less, then the period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years. The following shall apply to this subdivision:

(1) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case.

(2) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither.

(3) The court shall provide for restitution in proper cases.

(4) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation.

(b) The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. Any restitution payment received by a probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received by the department, provided, that payment need not be forwarded to a victim until 180 days from the date the first payment is received, if the restitution payments for that victim received by the probation department total less than fifty dollars ($50). In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be

forwarded to multiple victims when it is cost effective to do so, but in no event shall restitution disbursements be delayed beyond 180 days from the date the payment is received by the probation department.

(c) In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in the road camp, farm, or other public work instead of in jail. In this case, Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county.

(d) In all cases of probation the court may require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report them to the probation officer and apply those earnings as directed by the court.

(e) The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

(f) In all cases in which, as a condition of probation, a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve his or her sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

(g) (1) The court and prosecuting attorney shall consider whether any defendant who has been convicted of a nonviolent or nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the removal of graffiti in the performance of the community service. For the purpose of this subdivision, a nonserious offense shall not include the following:

(A) Offenses in violation of the Dangerous Weapons' Control Law (Chapter 1 (commencing with Section 12000) of Title 2 of Part 4).

(B) Offenses involving the use of a dangerous or deadly weapon, including all violations of Section 417.

(C) Offenses involving the use or attempted use of violence against the person of another or involving injury to a victim.

(D) Offenses involving annoying or molesting children.

(2) The court and the prosecuting attorney need not consider a defendant pursuant to paragraph (1) if the following circumstances exist:

(A) The defendant was convicted of any offense set forth in

subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) The judge believes that the public safety may be endangered if the person is ordered to do community service or the judge believes that the facts or circumstances or facts and circumstances call for imposition of a more substantial penalty.

(h) The probation officer or his or her designated representative shall consider whether any defendant who has been convicted of a nonviolent and nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations in the performance of the community service.

(i) Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

(j) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation. However, upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, those of each probationer shall be taken and a record of them kept and preserved.

(k) Notwithstanding any other provisions of law to the contrary, except as provided in Sections 13967 and 13967.5 of the Government Code and Sections 1202.4, 1203.04, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, all fines collected by a county probation officer in any of the courts of this state, as a

condition of the granting of probation or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund for the use and benefit of the county.

(*l*) If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 10 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 12. Section 4024.2 of the Penal Code is amended to read:

4024.2. (a) Notwithstanding any other law, the board of supervisors of any county may authorize the sheriff or other official in charge of county correctional facilities to offer a voluntary program under which any person committed to the facility may participate in a work release program pursuant to criteria described in subdivision (b), in which one day of participation will be in lieu of one day of confinement.

(b) The criteria for a work release program are the following:

(1) The work release program shall consist of any of the following:

(A) Manual labor to improve or maintain levees or public facilities, including, but not limited to, streets, parks, and schools.

(B) Manual labor in support of nonprofit organizations, as approved by the sheriff or other official in charge of the correctional facilities. As a condition of assigning participants of a work release program to perform manual labor in support of nonprofit organizations pursuant to this section, the board of supervisors shall obtain workers' compensation insurance which shall be adequate to cover work-related injuries incurred by those participants, in accordance with Section 3363.5 of the Labor Code.

(C) Performance of graffiti cleanup for local governmental entities, as approved by the sheriff or other official in charge of the correctional facilities.

(2) In addition, the sheriff or other official may permit a prisoner participating in a work release program to receive work release credit for participation in education, vocational training, or substance abuse programs in lieu of performing labor in a work release program on an hour-for-hour basis. However, credit for that participation may not exceed one-half of the hours established for the work release program, and the remaining hours shall consist of manual labor described in paragraph (1).

(3) The work release program shall be under the direction of a responsible person appointed by the sheriff or other official in charge.

(4) The hours of labor to be performed pursuant to this section shall be uniform for all persons committed to a facility in a county and may be determined by the sheriff or other official in charge of county correctional facilities, and each day shall be a minimum of 8 and a maximum of 10 hours, in accordance with the normal working hours of county employees assigned to supervise the programs. However, reasonable accommodation may be made for participation

in a program under paragraph (2).

As used in this section, "nonprofit organizations" means organizations established or operated for the benefit of the public or in support of a significant public interest, as set forth in Section 501(c)(3) of the Internal Revenue Code. Organizations established or operated for the primary purpose of benefiting their own memberships are specifically excluded.

(c) The board of supervisors may prescribe reasonable rules and regulations under which a work release program is operated and may provide that participants wear clothing of a distinctive character while performing the work. As a condition of participating in a work release program, a person shall give his or her promise to appear for work or assigned activity by signing a notice to appear before the sheriff or at the education, vocational, or substance abuse program at a time and place specified in the notice and shall sign an agreement that the sheriff may immediately retake the person into custody to serve the balance of his or her sentence if the person fails to appear for the program at the time and place agreed to, does not perform the work or activity assigned, or for any other reason is no longer a fit subject for release under this section. A copy of the notice shall be delivered to the person and a copy shall be retained by the sheriff. Any person who willfully violates his or her written promise to appear at the time and place specified in the notice is guilty of a misdemeanor.

Whenever a peace officer has reasonable cause to believe the person has failed to appear at the time and place specified in the notice or fails to appear or work at the time and place agreed to or has failed to perform the work assigned, the peace officer may, without a warrant, retake the person into custody, or the court may issue an arrest warrant for the retaking of the person into custody, to complete the remainder of the original sentence. A peace officer may not retake a person into custody under this subdivision, without a warrant for arrest, unless the officer has a written order to do so, signed by the sheriff or other person in charge of the program, which describes with particularity the person to be retaken.

(d) Nothing in this section shall be construed to require the sheriff or other official in charge to assign a person to a program pursuant to this section if it appears from the record that the person has refused to satisfactorily perform as assigned or has not satisfactorily complied with the reasonable rules and regulations governing the assignment or any other order of the court.

A person shall be eligible for work release under this section only if the sheriff or other official in charge concludes that the person is a fit subject therefor.

(e) The board of supervisors may prescribe a program administrative fee, not to exceed the pro rata cost of administration, to be paid by each person according to his or her ability to pay.

SEC. 13. Section 4024.2 of the Penal Code is amended to read:

4024.2. (a) Notwithstanding any other law, the board of

supervisors of any county may authorize the sheriff or other official in charge of county correctional facilities to offer a voluntary program under which any person committed to the facility may participate in a work release program pursuant to criteria described in subdivision (b), in which one day of participation will be in lieu of one day of confinement.

(b) The criteria for a work release program are the following:

(1) The work release program shall consist of any of the following:

(A) Manual labor to improve or maintain levees or public facilities, including, but not limited to, streets, parks, and schools.

(B) Manual labor in support of nonprofit organizations, as approved by the sheriff or other official in charge of the correctional facilities. As a condition of assigning participants of a work release program to perform manual labor in support of nonprofit organizations pursuant to this section, the board of supervisors shall obtain workers' compensation insurance which shall be adequate to cover work-related injuries incurred by those participants, in accordance with Section 3363.5 of the Labor Code.

(C) Performance of graffiti cleanup for local governmental entities, as approved by the sheriff or other official in charge of the correctional facilities.

(D) Any person who is not able to perform manual labor as specified in this paragraph because of a medical condition, physical disability, or age, may participate in a work release program involving any other type of public sector work that is designated and approved by the sheriff or other official in charge of county correctional facilities.

(2) In addition, the sheriff or other official may permit a prisoner participating in a work release program to receive work release credit for participation in education, vocational training, or substance abuse programs in lieu of performing labor in a work release program on an hour-for-hour basis. However, credit for that participation may not exceed one-half of the hours established for the work release program, and the remaining hours shall consist of manual labor described in paragraph (1).

(3) The work release program shall be under the direction of a responsible person appointed by the sheriff or other official in charge.

(4) The hours of labor to be performed pursuant to this section shall be uniform for all persons committed to a facility in a county and may be determined by the sheriff or other official in charge of county correctional facilities, and each day shall be a minimum of 8 and a maximum of 10 hours, in accordance with the normal working hours of county employees assigned to supervise the programs. However, reasonable accommodation may be made for participation in a program under paragraph (2).

As used in this section, "nonprofit organizations" means organizations established or operated for the benefit of the public or in support of a significant public interest, as set forth in Section

501(c)(3) of the Internal Revenue Code. Organizations established or operated for the primary purpose of benefiting their own memberships are specifically excluded.

(c) The board of supervisors may prescribe reasonable rules and regulations under which a work release program is operated and may provide that participants wear clothing of a distinctive character while performing the work. As a condition of participating in a work release program, a person shall give his or her promise to appear for work or assigned activity by signing a notice to appear before the sheriff or at the education, vocational, or substance abuse program at a time and place specified in the notice and shall sign an agreement that the sheriff may immediately retake the person into custody to serve the balance of his or her sentence if the person fails to appear for the program at the time and place agreed to, does not perform the work or activity assigned, or for any other reason is no longer a fit subject for release under this section. A copy of the notice shall be delivered to the person and a copy shall be retained by the sheriff. Any person who willfully violates his or her written promise to appear at the time and place specified in the notice is guilty of a misdemeanor.

Whenever a peace officer has reasonable cause to believe the person has failed to appear at the time and place specified in the notice or fails to appear or work at the time and place agreed to or has failed to perform the work assigned, the peace officer may, without a warrant, retake the person into custody, or the court may issue an arrest warrant for the retaking of the person into custody, to complete the remainder of the original sentence. A peace officer may not retake a person into custody under this subdivision, without a warrant for arrest, unless the officer has a written order to do so, signed by the sheriff or other person in charge of the program, that describes with particularity the person to be retaken.

(d) Nothing in this section shall be construed to require the sheriff or other official in charge to assign a person to a program pursuant to this section if it appears from the record that the person has refused to satisfactorily perform as assigned or has not satisfactorily complied with the reasonable rules and regulations governing the assignment or any other order of the court.

A person shall be eligible for work release under this section only if the sheriff or other official in charge concludes that the person is a fit subject therefor.

(e) The board of supervisors may prescribe a program administrative fee, not to exceed the pro rata cost of administration, to be paid by each person according to his or her ability to pay.

SEC. 13.5. Section 4024.2 of the Penal Code is amended to read:

4024.2. (a) Notwithstanding any other law, the board of supervisors of any county may authorize the sheriff or other official in charge of county correctional facilities to offer a voluntary program under which any person committed to the facility may participate in a work release program pursuant to criteria described

in subdivision (b), in which one day of participation will be in lieu of one day of confinement.

(b) The criteria for a work release program are the following:

(1) The work release program shall consist of any of the following:

(A) Manual labor to improve or maintain levees or public facilities, including, but not limited to, streets, parks, and schools.

(B) Manual labor in support of nonprofit organizations, as approved by the sheriff or other official in charge of the correctional facilities. As a condition of assigning participants of a work release program to perform manual labor in support of nonprofit organizations pursuant to this section, the board of supervisors shall obtain workers' compensation insurance which shall be adequate to cover work-related injuries incurred by those participants, in accordance with Section 3363.5 of the Labor Code.

(C) Performance of graffiti cleanup for local governmental entities, as approved by the sheriff or other official in charge of the correctional facilities.

(D) Performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations, as approved by the sheriff or other official in charge of the correctional facilities. Where a work release participant has been assigned to such a task, the sheriff or other official shall agree upon in advance with the senior service organization about the type of services to be rendered by the participant and the extent of contact permitted between the recipients of these services and the participant.

(2) The sheriff or other official may permit a prisoner participating in a work release program to receive work release credit for participation in education, vocational training, or substance abuse programs in lieu of performing labor in a work release program on an hour-for-hour basis. However, credit for that participation may not exceed one-half of the hours established for the work release program, and the remaining hours shall consist of manual labor described in paragraph (1).

(3) The work release program shall be under the direction of a responsible person appointed by the sheriff or other official in charge.

(4) The hours of labor to be performed pursuant to this section shall be uniform for all persons committed to a facility in a county and may be determined by the sheriff or other official in charge of county correctional facilities, and each day shall be a minimum of 8 and a maximum of 10 hours, in accordance with the normal working hours of county employees assigned to supervise the programs. However, reasonable accommodation may be made for participation in a program under paragraph (2).

As used in this section, "nonprofit organizations" means organizations established or operated for the benefit of the public or in support of a significant public interest, as set forth in Section 501(c)(3) of the Internal Revenue Code. Organizations established

or operated for the primary purpose of benefiting their own memberships are specifically excluded.

(c) The board of supervisors may prescribe reasonable rules and regulations under which a work release program is operated and may provide that participants wear clothing of a distinctive character while performing the work. As a condition of participating in a work release program, a person shall give his or her promise to appear for work or assigned activity by signing a notice to appear before the sheriff or at the education, vocational, or substance abuse program at a time and place specified in the notice and shall sign an agreement that the sheriff may immediately retake the person into custody to serve the balance of his or her sentence if the person fails to appear for the program at the time and place agreed to, does not perform the work or activity assigned, or for any other reason is no longer a fit subject for release under this section. A copy of the notice shall be delivered to the person and a copy shall be retained by the sheriff. Any person who willfully violates his or her written promise to appear at the time and place specified in the notice is guilty of a misdemeanor.

Whenever a peace officer has reasonable cause to believe the person has failed to appear at the time and place specified in the notice or fails to appear or work at the time and place agreed to or has failed to perform the work assigned, the peace officer may, without a warrant, retake the person into custody, or the court may issue an arrest warrant for the retaking of the person into custody, to complete the remainder of the original sentence. A peace officer may not retake a person into custody under this subdivision, without a warrant for arrest, unless the officer has a written order to do so, signed by the sheriff or other person in charge of the program, which describes with particularity the person to be retaken.

(d) Nothing in this section shall be construed to require the sheriff or other official in charge to assign a person to a program pursuant to this section if it appears from the record that the person has refused to satisfactorily perform as assigned or has not satisfactorily complied with the reasonable rules and regulations governing the assignment or any other order of the court.

A person shall be eligible for work release under this section only if the sheriff or other official in charge concludes that the person is a fit subject therefor.

(e) The board of supervisors may prescribe a program administrative fee, not to exceed the pro rata cost of administration, to be paid by each person according to his or her ability to pay.

SEC. 13.6. Section 4024.2 of the Penal Code is amended to read:

4024.2. (a) Notwithstanding any other law, the board of supervisors of any county may authorize the sheriff or other official in charge of county correctional facilities to offer a voluntary program under which any person committed to the facility may participate in a work release program pursuant to criteria described in subdivision (b), in which one day of participation will be in lieu

of one day of confinement.

(b) The criteria for a work release program are the following:

(1) The work release program shall consist of any of the following:

(A) Manual labor to improve or maintain levees or public facilities, including, but not limited to, streets, parks, and schools.

(B) Manual labor in support of nonprofit organizations, as approved by the sheriff or other official in charge of the correctional facilities. As a condition of assigning participants of a work release program to perform manual labor in support of nonprofit organizations pursuant to this section, the board of supervisors shall obtain workers' compensation insurance which shall be adequate to cover work-related injuries incurred by those participants, in accordance with Section 3363.5 of the Labor Code.

(C) Performance of graffiti cleanup for local governmental entities, as approved by the sheriff or other official in charge of the correctional facilities.

(D) Performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations, as approved by the sheriff or other official in charge of the correctional facilities. Where a work release participant has been assigned to such a task, the sheriff or other official shall agree upon in advance with the senior service organization about the type of services to be rendered by the participant and the extent of contact permitted between the recipients of these services and the participant.

(E) Any person who is not able to perform manual labor as specified in this paragraph because of a medical condition, physical disability, or age, may participate in a work release program involving any other type of public sector work that is designated and approved by the sheriff or other official in charge of county correctional facilities.

(2) The sheriff or other official may permit a prisoner participating in a work release program to receive work release credit for participation in education, vocational training, or substance abuse programs in lieu of performing labor in a work release program on an hour-for-hour basis. However, credit for that participation may not exceed one-half of the hours established for the work release program, and the remaining hours shall consist of manual labor described in paragraph (1).

(3) The work release program shall be under the direction of a responsible person appointed by the sheriff or other official in charge.

(4) The hours of labor to be performed pursuant to this section shall be uniform for all persons committed to a facility in a county and may be determined by the sheriff or other official in charge of county correctional facilities, and each day shall be a minimum of 8 and a maximum of 10 hours, in accordance with the normal working hours of county employees assigned to supervise the programs. However, reasonable accommodation may be made for participation

in a program under paragraph (2).

As used in this section, "nonprofit organizations" means organizations established or operated for the benefit of the public or in support of a significant public interest, as set forth in Section 501(c)(3) of the Internal Revenue Code. Organizations established or operated for the primary purpose of benefiting their own memberships are specifically excluded.

(c) The board of supervisors may prescribe reasonable rules and regulations under which a work release program is operated and may provide that participants wear clothing of a distinctive character while performing the work. As a condition of participating in a work release program, a person shall give his or her promise to appear for work or assigned activity by signing a notice to appear before the sheriff or at the education, vocational, or substance abuse program at a time and place specified in the notice and shall sign an agreement that the sheriff may immediately retake the person into custody to serve the balance of his or her sentence if the person fails to appear for the program at the time and place agreed to, does not perform the work or activity assigned, or for any other reason is no longer a fit subject for release under this section. A copy of the notice shall be delivered to the person and a copy shall be retained by the sheriff. Any person who willfully violates his or her written promise to appear at the time and place specified in the notice is guilty of a misdemeanor.

Whenever a peace officer has reasonable cause to believe the person has failed to appear at the time and place specified in the notice or fails to appear or work at the time and place agreed to or has failed to perform the work assigned, the peace officer may, without a warrant, retake the person into custody, or the court may issue an arrest warrant for the retaking of the person into custody, to complete the remainder of the original sentence. A peace officer may not retake a person into custody under this subdivision, without a warrant for arrest, unless the officer has a written order to do so, signed by the sheriff or other person in charge of the program, that describes with particularity the person to be retaken.

(d) Nothing in this section shall be construed to require the sheriff or other official in charge to assign a person to a program pursuant to this section if it appears from the record that the person has refused to satisfactorily perform as assigned or has not satisfactorily complied with the reasonable rules and regulations governing the assignment or any other order of the court.

A person shall be eligible for work release under this section only if the sheriff or other official in charge concludes that the person is a fit subject therefor.

(e) The board of supervisors may prescribe a program administrative fee, not to exceed the pro rata cost of administration, to be paid by each person according to his or her ability to pay.

SEC. 14. Section 13202.6 of the Vehicle Code is amended to read:

13202.6. (a) (1) For each conviction of a person for any offense

specified in subdivision (d), committed while the person was 13 years of age or older, the court may suspend the person's driving privilege for one year. If the person convicted does not yet have the privilege to drive, the court may order the department to delay issuing the privilege to drive for one year subsequent to the time the person becomes legally eligible to drive. However, if there is no further conviction for any offense specified in subdivision (d) in a 12-month period after the conviction, the court, upon petition of the person affected, may modify the order imposing the delay of the privilege. For each successive offense, the court shall suspend the person's driving privilege for those possessing a license or delay the eligibility for those not in possession of a license at the time of their conviction for one additional year.

(2) Any person whose driving privilege is suspended or delayed for an act involving vandalism in violation of Section 594 of the Penal Code, may elect to reduce the period of suspension or delay imposed by the court by performing community service under the supervision of the probation department. The period of suspension or delay ordered under paragraph (1) shall be reduced at the rate of one day for each hour of community service performed. For purposes of this paragraph, "community service" means cleaning up graffiti from any public property, including public transit vehicles.

(3) As used in this section, the term "conviction" includes the findings in juvenile proceedings specified in Section 13105.

(b) (1) Whenever the court suspends driving privileges pursuant to subdivision (a), the court in which the conviction is had shall require all drivers' licenses held by the person to be surrendered to the court. The court shall, within 10 days following the conviction, transmit a certified abstract of the conviction, together with any drivers' licenses surrendered, to the department.

(2) Violations of restrictions imposed pursuant to this section are subject to Section 14603.

(c) When the court is considering suspending or delaying driving privileges pursuant to subdivision (a), the court shall consider if a personal or family hardship exists that requires the person to have a driver's license for his or her own, or a member of his or her family's, employment or medically related purposes.

(d) This section applies to violations involving vandalism in violation of Section 594 of the Penal Code by defacing property with paint or any other liquid, or by spraying, scratching, or writing on a surface.

(e) The suspension, restriction, or delay of driving privileges pursuant to this section shall be in addition to any penalty imposed upon conviction of any violation specified in subdivision (d).

SEC. 14.5. Section 13202.6 of the Vehicle Code is amended to read:

13202.6. (a) (1) For each conviction of a person for any offense specified in subdivision (d), committed while the person was 13 years of age or older, the court may suspend the person's driving

privilege for one year. If the person convicted does not yet have the privilege to drive, the court may order the department to delay issuing the privilege to drive for one year subsequent to the time the person becomes legally eligible to drive. However, if there is no further conviction for any offense specified in subdivision (d) in a 12-month period after the conviction, the court, upon petition of the person affected, may modify the order imposing the delay of the privilege. For each successive offense, the court shall suspend the person's driving privilege for those possessing a license or delay the eligibility for those not in possession of a license at the time of their conviction for one additional year.

(2) Any person whose driving privilege is suspended or delayed for an act involving vandalism in violation of Section 594 of the Penal Code, may elect to reduce the period of suspension or delay imposed by the court by performing community service under the supervision of the probation department. The period of suspension or delay ordered under paragraph (1) shall be reduced at the rate of one day for each hour of community service performed. For purposes of this paragraph, "community service" means cleaning up graffiti from any public property, including public transit vehicles.

(3) As used in this section, the term "conviction" includes the findings in juvenile proceedings specified in Section 13105.

(b) (1) Whenever the court suspends driving privileges pursuant to subdivision (a), the court in which the conviction is had shall require all drivers' licenses held by the person to be surrendered to the court. The court shall, within 10 days following the conviction, transmit a certified abstract of the conviction, together with any drivers' licenses surrendered, to the department.

(2) Violations of restrictions imposed pursuant to this section are subject to Section 14603.

(c) When the court is considering suspending or delaying driving privileges pursuant to subdivision (a), the court shall consider if a personal or family hardship exists that requires the person to have a driver's license for his or her own, or a member of his or her family's, employment or medically related purposes.

(d) This section applies to violations involving vandalism in violation of Section 594 of the Penal Code by defacing property, with paint or any other liquid, or by spraying, scratching, writing, or affixing graffiti on a surface of that property.

(e) The suspension, restriction, or delay of driving privileges pursuant to this section shall be in addition to any penalty imposed upon conviction of any violation specified in subdivision (d).

SEC. 15. Section 2.5 of this bill incorporates amendments to Section 417 of the Penal Code proposed by both this bill and AB 1268. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 417 of the Penal Code, and (3) this bill is enacted after AB 1268, in which case Section 2 of this bill shall not become operative.

SEC. 16. Section 5.5 of this bill incorporates amendments to

Section 594.1 of the Penal Code proposed by this bill and AB 839. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 594.1 of the Penal Code, and (3) this bill is enacted after AB 839, in which case, Section 5 of this bill shall not become operative.

SEC. 17. Section 8.5 of this bill incorporates amendments to, and further amends, Section 640.5 of the Penal Code proposed by this bill and SB 374. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 640.5 of the Penal Code, and (3) this bill is enacted after SB 374, in which case Section 8 of this bill shall not become operative.

SEC. 18. Section 9.5 of this bill incorporates amendments to, and further amends, Section 640.6 of the Penal Code proposed by this bill and SB 374. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 640.6 of the Penal Code, and (3) this bill is enacted after SB 374, in which case Section 9 of this bill shall not become operative.

SEC. 19. Section 11.5 of this bill incorporates amendments to Section 1203.1 of the Penal Code proposed by both this bill and AB 663. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 1203.1 of the Penal Code, and (3) this bill is enacted after AB 663, in which case Section 11 of this bill shall not become operative.

SEC. 20. (a) Section 13 of this bill incorporates amendments to Section 4024.2 of the Penal Code proposed by both this bill and AB 381. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 4024.2 of the Penal Code, (3) AB 663 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 381, in which case Sections 12, 13.5, and 13.6 of this bill shall not become operative.

(b) Section 13.5 of this bill incorporates amendments to Section 4024.2 of the Penal Code proposed by both this bill and AB 663. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 4024.2 of the Penal Code, (3) AB 381 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 663, in which case, Sections 12, 13, and 13.6 of this bill shall not become operative.

(c) Section 13.6 of this bill incorporates amendments to Section 4024.2 of the Penal Code proposed by this bill, AB 381, and AB 663. It shall only become operative if (1) all three bills are enacted and become effective on January 1, 1994, each bill amends Section 4024.2 of the Penal Code, and (3) this bill is enacted after AB 381 and AB 663, in which case Sections 12, 13, and 13.5 of this bill shall not become operative.

SEC. 21. Section 14.5 of this bill incorporates amendments to Section 13202.6 of the Vehicle Code proposed by this bill and AB

2365. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 13202.6 of the Vehicle Code, and (3) this bill is enacted after AB 2365, in which case Section 13202.6 of the Vehicle Code, as amended by AB 2365, shall remain operative only until the operative date of this bill, at which time Section 14.5 of this bill shall become operative and Section 14 of this bill shall not become operative.

SEC. 22. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 606

An act to amend Section 6254 of the Government Code, to amend Sections 12001, 12001.6, 12026.2, 12071, 12072, 12073, 12077, 12081, 12084, 12276, 12601, 12809, and 13511.5 of, to amend the headings of Article 2 (commencing with Section 12020) and Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4 of, and to amend, repeal, and add Sections 12070, 12076, and 12078 of, the Penal Code, and to amend Section 8102 of the Welfare and Institutions Code, relating to firearms, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 6254 of the Government Code, as amended by Section 2 of Chapter 1128 of the Statutes of 1992, is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public

agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files which reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and

local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height, and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with

the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560), of Division 4 of Title 1, which reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or which provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089), of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code,

which reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or which provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services which is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until such time as a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals which has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600), or Article 8 (commencing with Section 37650), of Chapter 5 of Division 3 of Title 4 of this code, which relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department which indicates when or where the applicant is vulnerable to attack or which concerns the applicant's medical or psychological history or that of members of his or her family.

(v) Residence addresses contained in licensure applications and registration applications for collection agencies as may be required

by the Bureau of Collection and Investigative Services of the Department of Consumer Affairs pursuant to Sections 6876.2, 6877, 6878, and 6894.3 of the Business and Professions Code.

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and which reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts, and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(x) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit

Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

This section shall become operative July 1, 1993.

SEC. 2. Section 12001 of the Penal Code is amended to read:

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

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

(c) As used in Sections 12021, 12021.1, 12070, 12071, 12072, 12073, and 12078 of this code, and Sections 8100 and 8103 of the Welfare and Institutions Code, the term "firearm" includes the frame or receiver of any such weapon.

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

(e) (1) For purposes of Sections 12070, 12071, and subdivisions (b), (c), and (d) of Section 12072, the term "firearm" does not include an unloaded firearm which is defined as an "antique firearm" in Section 921 (a) (16) of Title 18 of the United States Code.

(2) For purposes of Sections 12070, 12071, and subdivisions (b), (c), and (d) of Section 12072, the term "firearm" does not include an unloaded firearm that meets both of the following:

(A) It is not a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) It is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.

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

(g) For purposes of Section 12551, the term "firearm" also shall include any instrument which expels a metallic projectile, such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or

spring action, or any spot marker gun.

(h) As used in this title, "wholesaler" means any person who is licensed as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who sells or transfers or assigns firearms, or parts of firearms, to persons who are licensed as manufacturers, importers, or gunsmiths pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, or persons licensed pursuant to Section 12071 and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms, in furtherance of that purpose.

"Wholesaler" shall not include a manufacturer or importer or a gunsmith who is licensed to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code or a person licensed pursuant to Section 12071 and the regulations issued pursuant thereto. A wholesaler also does not include those persons dealing exclusively in grips, stocks, and other parts of firearms that are not frames or receivers thereof.

(i) As used in Section 12071, 12072, or 12084, "application to purchase" means either of the following:

(1) The initial completion of the register by the purchaser or transferee as required by subdivision (a) of Section 12076.

(2) The initial completion of the LEFT by the purchaser or transferee as required by subdivision (d) of Section 12084.

SEC. 3. Section 12001.6 of the Penal Code is amended to read:

12001.6. As used in this chapter, an offense which involves the violent use of a firearm includes any of the following:

(a) A violation of paragraph (2) or (3) of subdivision (a) of Section 245 or a violation of subdivision (c) of Section 245.

(b) A violation of Section 246.

(c) A violation of paragraph (2) of subdivision (a) of Section 417.

(d) A violation of subdivision (c) of Section 417.

SEC. 4. The heading of Article 2 (commencing with Section 12020) of Chapter 1 of Title 2 of Part 4 of the Penal Code is amended to read:

Article 2. Unlawful Carrying and Possession of Weapons

SEC. 5. Section 12026.2 of the Penal Code is amended to read:

12026.2. (a) Section 12025 does not apply to or affect any of the following:

(1) The possession of a firearm by an authorized participant in a motion picture, television, or video production or entertainment event when the participant lawfully uses the firearm as part of that production or event or while going directly to, or coming directly from, that production or event.

(2) The possession of a firearm in a locked container by a member of any club or organization, organized for the purpose of lawfully collecting and lawfully displaying pistols, revolvers, or other

firearms, while the member is at meetings of the clubs or organizations or while going directly to, and coming directly from, those meetings.

(3) The transportation of a firearm by a participant when going directly to, or coming directly from, a recognized safety or hunter safety class, or a recognized sporting event involving that firearm.

(4) The transportation of a firearm by a person mentioned in Section 12026 directly between any of the places mentioned in Section 12026.

(5) The transportation of a firearm by a person when going directly to, or coming directly from, a fixed place of business or private residential property for the purpose of the lawful repair or the lawful transfer of that firearm.

(6) The transportation of a firearm by a person listed in Section 12026 when going directly from the place where that person lawfully received that firearm to that person's place of residence or place of business or to private property owned or lawfully possessed by that person.

(7) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show, swap meet, or similar event to which the public is invited, for the purposes of displaying that firearm in a lawful manner.

(8) The transportation of a firearm by an authorized employee or agent of a supplier of firearms when going directly to, or coming directly from, a motion picture, television, or video production or entertainment event for the purpose of providing that firearm to an authorized participant to lawfully use as a part of that production or event.

(9) The transportation of a firearm by a person when going directly to, or coming directly from, a target range, which holds a regulatory or business license, for the purposes of practicing shooting at targets with that firearm at that target range.

(10) The transportation of a firearm by a person when going directly to, or coming directly from, a place designated by a person authorized to issue licenses pursuant to Section 12050 when done at the request of the issuing agency so that the issuing agency can determine whether or not a license should be issued to that person to carry that firearm.

(11) The transportation of a firearm by a person when going directly to, or coming directly from, a law enforcement agency for the purpose of a lawful transfer of that firearm pursuant to Section 12084.

(12) The transportation of a firearm by a person when going directly to, or coming directly from, a lawful camping activity for purposes of having that firearm available for lawful personal protection while at the lawful campsite. This paragraph shall not be construed to override the statutory authority granted to the Department of Parks and Recreation or any other state or local governmental agencies to promulgate rules and regulations

governing the administration of parks and campgrounds.

(13) The transportation of a firearm by a person in order to comply with subdivision (i) of Section 12078 as it pertains to that firearm.

(14) The transportation of a firearm by a person in order to utilize subdivision (*l*) of Section 12078 as it pertains to that firearm.

(15) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show or event, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations for the purpose of lawfully transferring that firearm in accordance with subdivision (d) of Section 12072.

(b) In order for a firearm to be exempted under subdivision (a), while being transported to or from a place, the firearm shall be unloaded, kept in a locked container, as defined in subdivision (d), and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

(c) This section does not prohibit or limit the otherwise lawful carrying or transportation of any pistol, revolver, or other firearm capable of being concealed upon the person in accordance with this chapter.

(d) As used in this section, "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle.

SEC. 6. The heading of Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4 of the Penal Code is amended to read:

Article 3. Licenses to Carry Pistols and Revolvers

SEC. 7. Section 12070 of the Penal Code is amended to read:

12070. (a) No person shall sell, lease, or transfer firearms unless he or she has been issued a license pursuant to Section 12071. Any person violating this section is guilty of a misdemeanor.

(b) Subdivision (a) does not include any of the following:

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

(2) A person acting pursuant to subdivision (e) of Section 186.22a or subdivision (c) of Section 12028.

(3) The sale, lease, or transfer of a firearm by a person who obtains title to the firearm by intestate succession or by bequest or as a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code, provided the person disposes of the firearm within 60 days of receipt of the

firearm.

(4) The infrequent sale, lease, or transfer of firearms.

(5) The sale, lease, or transfer of used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at gun shows or events, as specified in subparagraph (B) of paragraph (1) of subdivision (b) of Section 12071, by a person other than a licensee or dealer, provided the person has a valid federal firearms license and a certificate of eligibility issued by the Department of Justice, as specified in Section 12071, and provided all the sales, leases, or transfers fully comply with subdivision (d) of Section 12072. However, the person shall not engage in the sale, lease, or transfer of used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person at more than 12 gun shows or events in any calendar year and shall not sell, lease, or transfer more than 15 used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person at any single gun show or event. In no event shall the person sell more than 75 used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person in any calendar year.

A person described in this paragraph shall be known as a "Gun Show Trader."

The Department of Justice shall adopt regulations to administer this program and shall recover the full costs of administration from fees assessed applicants.

As used in this paragraph, the term "used firearm" means a firearm that has been sold previously at retail and is more than three years old.

(6) The activities of a law enforcement agency pursuant to Section 12084.

(7) Deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(8) The sale, delivery, or transfer of firearms by manufacturers or importers licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to dealers or wholesalers.

(9) Deliveries and transfers of firearms made pursuant to Section 12028, 12028.5, or 12030.

(10) The loan of a firearm for the purposes of shooting at targets if the loan occurs on the premises of a target facility which holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(11) Sales, deliveries, or transfers of firearms by manufacturers,

importers, or wholesalers licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(12) Sales, deliveries, or transfers of firearms by persons who reside outside this state and are licensed outside this state pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to wholesalers, manufacturers, or importers, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(13) Sales, deliveries, or transfers of firearms by wholesalers to dealers.

(14) Sales, deliveries, or transfers of firearms by persons who reside outside this state to dealers, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.

(15) Sales, deliveries, or transfers of firearms by persons who reside outside this state and are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to persons licensed pursuant to Section 12071, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(16) The delivery, sale, or transfer of an unloaded firearm by one wholesaler to another wholesaler if that firearm is intended as merchandise in the receiving wholesaler's business.

(c) (1) As used in this section, "infrequent" means:

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

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

(2) As used in this section, "operation of law" includes, but is not limited to, any of the following:

(A) The executor or administrator of an estate if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the

firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property between spouses pursuant to Section 5110.710 of the Civil Code.

(d) This section is repealed as of January 1, 1994.

SEC. 8. Section 12070 is added to the Penal Code, to read:

12070. (a) No person shall sell, lease, or transfer firearms unless he or she has been issued a license pursuant to Section 12071. Any person violating this section is guilty of a misdemeanor.

(b) Subdivision (a) does not include any of the following:

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

(2) A person acting pursuant to subdivision (e) of Section 186.22a or subdivision (c) of Section 12028.

(3) The sale, lease, or transfer of a firearm by a person who obtains title to the firearm by intestate succession or by bequest or as a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code, provided the person disposes of the firearm within 60 days of receipt of the firearm.

(4) The infrequent sale, lease, or transfer of firearms.

(5) The sale, lease, or transfer of used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at gun shows or events, as specified in subparagraph (B) of paragraph (1) of subdivision (b) of Section 12071, by a person other than a licensee or dealer, provided the person has a valid federal firearms license and a certificate of eligibility issued by the Department of Justice, as specified in Section 12071, and provided all the sales, leases, or transfers fully comply with subdivision (d) of Section 12072. However, the person shall not engage in the sale, lease, or transfer of used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person at more than 12 gun shows or events in any calendar year and shall not sell, lease, or transfer more than 15 used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person at any single gun show or event. In no event shall the person sell more than 75 used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person in any calendar

year.

A person described in this paragraph shall be known as a "Gun Show Trader."

The Department of Justice shall adopt regulations to administer this program and shall recover the full costs of administration from fees assessed applicants.

As used in this paragraph, the term "used firearm" means a firearm that has been sold previously at retail and is more than three years old.

(6) The activities of a law enforcement agency pursuant to Section 12084.

(7) Deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(8) The sale, delivery, or transfer of firearms by manufacturers or importers licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to dealers or wholesalers.

(9) Deliveries and transfers of firearms made pursuant to Section 12028, 12028.5, or 12030.

(10) The loan of a firearm for the purposes of shooting at targets, if the loan occurs on the premises of a target facility which holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(11) Sales, deliveries, or transfers of firearms by manufacturers, importers, or wholesalers licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(12) Sales, deliveries, or transfers of firearms by persons who reside outside this state and are licensed outside this state pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to wholesalers, manufacturers, or importers, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(13) Sales, deliveries, or transfers of firearms by wholesalers to dealers.

(14) Sales, deliveries, or transfers of firearms by persons who reside outside this state to persons licensed pursuant to Section 12071, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.

(15) Sales, deliveries, or transfers of firearms by persons who reside outside this state and are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to dealers, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(16) The delivery, sale, or transfer of an unloaded firearm by one wholesaler to another wholesaler if that firearm is intended as merchandise in the receiving wholesaler's business.

(c) (1) As used in this section, "infrequent" means:

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

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

(2) As used in this section, "operation of law" includes, but is not limited to, any of the following:

(A) The executor or administrator of an estate, if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver, if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties, if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property between spouses pursuant to Section 850 of the Family Code.

(d) This section shall become operative on January 1, 1994.

SEC. 9. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who has (A) a valid federal firearms license, (B) any regulatory or business license, or licenses, required by local government, (C) a valid seller's permit issued by the State Board of Equalization, (D) a certificate of eligibility issued by the

Department of Justice pursuant to paragraph (4), and (E) a license issued in the format prescribed by paragraph (6).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant when the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license which states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

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

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a), for purposes of complying with Section 12082, may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or

event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a).

A person licensed pursuant to subdivision (a), at gun shows and events, also may sell, lease, or transfer firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, provided the person (i) complies with all other applicable law, including, but not limited to, the 15-day waiting period specified in subparagraph (A) of paragraph (3), and (ii) complies with all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

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

(3) No firearm shall be delivered:

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

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

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

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

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

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

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

(7) The licensee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height:

"IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser or transferee presents to the dealer a basic firearm safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(c) (1) As used in this article, "clear evidence of his or her identity and age" includes, but is not limited to, a motor vehicle operator's license, a state identification card, an armed forces identification card, an employment identification card which contains the bearer's signature and photograph, or any similar documentation which provides the seller reasonable assurance of the

identity and age of the purchaser.

(2) As used in this article, "a basic firearm safety certificate" means a basic firearm certificate issued to the purchaser or transferee by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(d) Commencing March 1, 1994, the Department of Justice shall keep a centralized list of all persons licensed pursuant to this section and shall make information about an individual dealer available, upon request, for one of the following purposes:

(1) For law enforcement purposes.

(2) When the information is requested by a manufacturer, an importer, a wholesaler, or a dealer for determining the validity of the license for firearm shipments.

SEC. 9.5. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who has (A) a valid federal firearms license, (B) any regulatory or business license, or licenses, required by local government, (C) a valid seller's permit issued by the State Board of Equalization, (D) a certificate of eligibility issued by the Department of Justice pursuant to paragraph (4), and (E) a license issued in the format prescribed by paragraph (6).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant when the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license which states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

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

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the 15-day waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

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

(3) No firearm shall be delivered:

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

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

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

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

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

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

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

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

(7) The licensee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height:

"IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser or transferee presents to the dealer a basic firearm safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(c) (1) As used in this article, "clear evidence of his or her identity and age" includes, but is not limited to, a motor vehicle operator's license, a state identification card, an armed forces identification card, an employment identification card which contains the bearer's signature and photograph, or any similar documentation which provides the seller reasonable assurance of the identity and age of the purchaser.

(2) As used in this article, "a basic firearm safety certificate" means a basic firearm certificate issued to the purchaser or transferee by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(d) Commencing March 1, 1994, the Department of Justice shall keep a centralized list of all persons licensed pursuant to this section and shall make information about an individual dealer available, upon request, for one of the following purposes:

(1) For law enforcement purposes.

(2) When the information is requested by a manufacturer, an importer, a wholesaler, or a dealer for determining the validity of the license for firearm shipments.

SEC. 10. Section 12072 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

(5) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser or transferee presents to the dealer a basic firearm safety certificate.

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

(1) A licensed dealer pursuant to Section 12082.

(2) A law enforcement agency pursuant to Section 12084.

(e) No person may commit an act of collusion relating to Article 8 (commencing with Section 12800) of Chapter 6. For purposes of this section and Section 12071, collusion may be proven by any one of the following factors:

(1) Answering a test applicant's questions during an objective test relating to basic firearms safety.

(2) Knowingly misgrading the examination.

(3) Providing an advance copy of the test to an applicant.

(4) Taking or allowing another person to take the basic firearms safety course for one who is the applicant for the basic firearms safety certificate.

(5) Allowing another to take the objective test for the applicant,

purchaser, or transferee.

(6) Allowing others to give unauthorized assistance during the examination.

(7) Reference to materials during the examination and cheating by the applicant.

(8) Providing originals or photocopies of the objective test, or any version thereof, to any person other than as specified in subdivision (f) of Section 12805.

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

SEC. 11. Section 12073 of the Penal Code is amended to read:

12073. (a) Every dealer shall keep a register in which shall be entered the information prescribed in Section 12077.

(b) This section shall not require the entry in the register of any of the following transactions:

(1) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to another dealer upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(2) The delivery, sale, or transfer of an unloaded firearm by a dealer to another dealer if that firearm is intended as merchandise in the receiving dealer's business upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(3) The delivery, sale, or transfer of an unloaded firearm by a dealer to a person licensed as an importer or manufacturer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(4) The delivery, sale, or transfer of an unloaded firearm by a dealer who sells, transfers, or delivers the firearm to a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(5) The delivery, sale, or transfer of an unloaded firearm by a dealer to a wholesaler if that firearm is being returned to the wholesaler and is intended as merchandise in the wholesaler's business.

(6) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to himself or herself.

(c) A violation of this section is a misdemeanor.

SEC. 12. Section 12076 of the Penal Code is amended to read:

12076. (a) The purchaser or transferee of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate.

The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser or transferee. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

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

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

(c) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser or transferee is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

If the department determines that the purchaser or transferee is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or county in which the sale or transfer was made, or if the sale or transfer was made in a district in which there is no municipal police department, the sheriff of the county in which the sale or transfer was made, of that fact.

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

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

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by the amendments to Section 8103 of the Welfare and Institutions Code, made by the act which also added this paragraph.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by the amendments to Section 8104 of the Welfare and Institutions Code made by the act which also added this paragraph.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (b) of Section 550 of the Code of Civil Procedure created by the act which also added this paragraph.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by the act which added paragraph (2) to this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by the act which added paragraph (3) to this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by the act which added paragraph (4) to this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (b) of Section 550 of the Code of Civil Procedure created by the act which added paragraph (5) to this subdivision, and the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code created by the act which added paragraph (6) to this subdivision.

(e) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement

agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078.

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (d) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(f) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section and Sections 12289 and 12809.

(g) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale or transfer of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(h) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to subdivision (i) of Section 12078.

(i) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(j) This section is repealed as of January 1, 1994.

SEC. 13. Section 12076 is added to the Penal Code, to read:

12076. (a) The purchaser or transferee of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the

purchaser or transferee. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

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

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

(c) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser or transferee is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

If the department determines that the purchaser or transferee is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or county in which the sale or transfer was made, or if the sale or transfer was made in a district in which there is no municipal police department, the sheriff of the county in which the sale or transfer was made, of that fact.

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

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

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by the amendments to Section 8103 of the Welfare and Institutions Code, made by the act which also added this paragraph.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by the amendments to Section 8104 of the Welfare and Institutions Code made by the act which also added this paragraph.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by the act which added paragraph (2) to this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by the act which added paragraph (3) to this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by the act which added paragraph (4) to this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, and the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code created by the act which added paragraph (6) to this subdivision.

(e) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement

agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078.

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (d) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(f) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section and Sections 12289 and 12809.

(g) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale or transfer of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the sale or transfer of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that sale or transfer.

(h) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to subdivision (i) of Section 12078.

(i) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(j) This section shall become operative on January 1, 1994.

SEC. 14. Section 12077 of the Penal Code is amended to read:

12077. (a) (1) The Department of Justice shall prescribe the form of the register described in Section 12074. There shall be two forms of the register with the format set forth in paragraph (2) of this subdivision for pistols, revolvers, and other firearms capable of being concealed upon the person and the format set forth in paragraph (3)

of this subdivision for all firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person.

(2) For pistols, revolvers, and other firearms capable of being concealed upon the person, information contained in the register shall be the date and time of sale, make of firearm, peace officer exemption status pursuant to subdivision (a) of Section 12078 and the agency name, dealer waiting period exemption pursuant to subdivision (n) of Section 12078, manufacturer's name if stamped on the firearm, model name or number, if stamped on the firearm, if applicable, serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, color of the firearm, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, all legal names and aliases ever used by the purchaser, yes or no answer to questions that prohibit purchase including, but not limited to, conviction of a felony as described in Section 12021 or an offense described in Section 12021.1, the purchaser's status as a person described in Section 8100 of the Welfare and Institutions Code, whether the purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether the purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), name and complete address of the dealer or firm selling the firearm as shown on the dealer's license, the establishment number, if assigned, the dealer's complete business telephone number, any information required by Section 12082, and a statement that any person signing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register is guilty of a misdemeanor.

(3) For firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, information contained in the register shall be the date and time of sale, peace officer exemption status pursuant to subdivision (a) of Section 12078 and the agency name, auction or event waiting period exemption pursuant to subdivision (g) of Section 12078, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, all legal names and aliases ever used by the purchaser, yes or no answer to questions that prohibit purchase, including, but

not limited to, conviction of a felony as described in Section 12021 or an offense described in Section 12021.1, the purchaser's status as a person described in Section 8100 of the Welfare and Institutions Code, whether the purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether the purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), name and complete address of the dealer or firm selling the firearm as shown on the dealer's license, the establishment number, if assigned, the dealer's complete business telephone number, any information required by Section 12082, and a statement that any person signing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register is guilty of a misdemeanor.

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

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

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

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

(5) One firearm transaction shall be reported on each record of sale document. For purposes of this subdivision, a "transaction" means a single sale or transfer of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(c) As used in this section, the following definitions shall control:

(1) "Purchaser" means the purchaser or transferee of a firearm.

(2) "Purchase" means the purchase or transfer of a firearm.

SEC. 15. Section 12078 of the Penal Code is amended to read:

12078. (a) (1) The preceding provisions of this article, except subdivision (e) of Section 12076, do not apply to deliveries, sales, or transfers of firearms made to persons properly identified as full-time paid peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, provided that the peace officers are authorized by their employer to carry firearms while in the

performance of their duties, nor to deliveries, sales, or transfers of firearms made to authorized representatives of cities, cities and counties, counties, state or federal governments for use by those governmental agencies. Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of his or her duties, and authorizing the purchase or transfer. The certification shall be delivered to the seller or transferor at the time of purchase or transfer and the purchaser or transferee shall identify himself or herself as the person authorized in the certification. On the day the delivery, sale, or transfer is made, where a peace officer is receiving the firearm, and either a dealer is not the seller or transferor, or is not otherwise the person responsible for the delivery of the firearm, or the sale or transfer is not conducted through a law enforcement agency pursuant to Section 12084, the peace officer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the seller or transferor, the buyer or transferee, the firearm as is indicated in Section 12077, together with the original certification. On the day the delivery, sale, or transfer is made, where a dealer is the transferor, seller, or otherwise responsible for delivery of the firearm, the dealer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12077, together with the original certification. On the day the delivery, sale, or transfer is made, where the transfer is conducted pursuant to Section 12084, the law enforcement agency shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12084, together with the original certification. The reports which peace officers shall complete shall be provided to them by the department. No report need be submitted to the Department of Justice where a peace officer receiving the firearm received it from his or her employer in accordance with the applicable rules, regulations, or procedures of the employer.

(2) The preceding provisions of this article, except subdivision (e) of Section 12076, do not apply to deliveries, sales, or transfers of firearms made to peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 made pursuant to Section 10334 of the Public Contracts Code. On the day the delivery, sale, or transfer is made, and a dealer is not the person responsible for the delivery of the firearm or the sale or transfer is not conducted through a law enforcement agency pursuant to Section 12084, the peace officer receiving the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the seller or transferor, the buyer or transferee, and the firearm as is indicated in Section 12077. On the day the delivery, sale, or transfer is made, where a dealer is

responsible for delivery of the firearm, the dealer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12077. On the day the delivery, sale, or transfer is made where the transfer is conducted pursuant to Section 12084, the law enforcement agency shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12084. The reports which peace officers shall complete shall be the same as those set forth in paragraph (1) of this subdivision and shall be provided to them by the department.

(3) Subdivision (d) of Section 12072 does not apply to deliveries, sales, or transfers of firearms to authorized representatives of cities, cities and counties, counties, or state or federal governments for those governmental agencies where the entity is acquiring the weapon as part of an authorized, voluntary program where the entity is buying or receiving weapons from private individuals. Any weapons acquired pursuant to this subdivision shall be disposed of pursuant to the applicable provisions of Section 12028 or 12032.

(b) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(c) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of firearms by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family.

(2) As used in this subdivision, immediate family member means any one of the following relationships:

(A) Parent and child.

(B) Grandparent and grandchild.

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

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

(f) Subdivision (d) of Section 12072 shall not apply to the delivery, sale, or transfer of firearms by persons who reside in this state to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the delivery, sale, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(g) (1) Subdivision (d) of Section 12072 shall not apply to the

infrequent sale or transfer of a firearm, other than a pistol, revolver, or other firearm capable of being concealed upon the person, at auctions or similar events conducted by nonprofit mutual or public benefit corporations organized pursuant to the Corporations Code.

As used in this paragraph, the term "infrequent" shall not be construed to prohibit different local chapters of the same nonprofit corporation from conducting auctions or similar events, provided the individual local chapter conducts the auctions or similar events infrequently. It is the intent of the Legislature that different local chapters, representing different localities, be entitled to invoke the exemption created by this paragraph, notwithstanding the frequency with which other chapters of the same nonprofit corporation may conduct auctions of similar events.

(2) Subdivision (d) of Section 12072 shall not apply to the transfer of a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, if the firearm is donated for an auction or similar event described in paragraph (1) and the firearm is delivered to the nonprofit corporation immediately preceding, or contemporaneous with, the auction or similar event.

(3) The waiting period described in Sections 12071 and 12072 shall not apply to a dealer who delivers a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, at an auction or similar event described in paragraph (1), as authorized by subparagraph (C) of paragraph (1) of subdivision (b) of Section 12071. Within 48 hours of the delivery, sale, or transfer, the dealer shall forward by prepaid mail to the Department of Justice a report of the same as is indicated in paragraph (3) of subdivision (a) of Section 12077.

(h) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm for the purposes of shooting at targets if the loan occurs on the premises of a target facility which holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(i) (1) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of firearms by operation of law if all the following conditions are met:

(A) The person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms.

(B) If the firearms are pistols, revolvers, or other firearms capable of being concealed upon the person, and the person is not a levying officer as defined in Section 481.140, 511.060, or 680.210 of the Code of Civil Procedure, the person, within 30 days of taking possession, shall forward by prepaid mail to the Department of Justice, a report of the same and the type of information concerning the individual taking possession of the firearm, how title or possession was obtained

and from whom, and a description of the firearm in question. The reports which individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(C) In the case of a transmutation of property between spouses made in accordance with Section 5110.710 of the Civil Code consisting of a pistol, revolver, or other firearm capable of being concealed upon the person, taking place on or after April 1, 1994, a basic firearm safety certificate shall be required.

(2) Subdivision (d) of Section 12072 shall not apply to a person who takes possession of a firearm by operation of law in a representative capacity who transfers ownership of the firearm to himself or herself in his or her individual capacity. In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, on and after April 1, 1994, that individual shall have a basic firearm safety certificate in order for the exemption set forth in this paragraph to apply.

(j) Subdivision (d) of Section 12072 shall not apply to deliveries, transfers, or returns of firearms made pursuant to Section 12028, 12028.5, or 12030.

(k) Section 12071 and subdivision (c) of Section 12072 shall not apply to:

(1) The delivery, sale, or transfer of unloaded firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person by a dealer to another dealer upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(2) The delivery, sale, or transfer of unloaded firearms by dealers to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(3) The delivery, sale, or transfer of unloaded firearms to a wholesaler if the firearms are being returned to the wholesaler and are intended as merchandise in the wholesaler's business.

(4) The delivery, sale, or transfer of unloaded firearms by one dealer to another dealer if the firearms are intended as merchandise in the receiving dealer's business upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(5) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to himself or herself.

(*l*) A person who is exempt from subdivision (d) of Section 12072 or is otherwise not required by law to report his or her acquisition, ownership, or disposal of a pistol, revolver, or other firearm capable of being concealed upon the person or who moves out of this state with his or her pistol, revolver, or other firearm capable of being concealed upon the person may submit a report of the same to the Department of Justice in a format prescribed by the department.

(m) Subdivision (d) of Section 12072 shall not apply to the delivery, sale, or transfer of unloaded firearms to a wholesaler as merchandise in the wholesaler's business by manufacturers or

importers licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, or by another wholesaler, if the delivery, sale, or transfer is made in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(n) (1) The waiting period described in Sections 12071 and 12072 shall not apply to the delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer in either of the following situations:

(A) The dealer is delivering the firearm to another dealer and it is not intended as merchandise in the receiving dealer's business.

(B) The dealer is delivering the firearm to himself or herself and it is not intended as merchandise in his or her business.

(2) In order for this subdivision to apply, both of the following shall occur:

(A) Where the dealer is receiving the firearm from another dealer, the dealer receiving the firearm shall present proof to the dealer delivering the firearm that he or she is licensed pursuant to Section 12071.

(B) Whether the dealer is delivering, selling, or transferring the firearm to himself or herself or to another dealer, on the day that the delivery, sale, or transfer is made, the dealer delivering the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the purchaser or transferee as is indicated in paragraph (2) of subdivision (a) of Section 12077.

(o) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery, sale, or transfer of firearms regulated pursuant to Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275), if the delivery, sale, or transfer is conducted in accordance with the applicable provisions of Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275).

(p) As used in this section:

(1) "Infrequent" has the same meaning as in paragraph (1) of subdivision (c) of Section 12070.

(2) "A person taking title or possession of firearms by operation of law" includes, but is not limited to, any of the following instances wherein an individual receives title to, or possession of, firearms:

(A) The executor or administrator of an estate if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property consisting of firearms pursuant to Section 5110.710 of the Civil Code.

(H) Firearms passing to a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.

(q) This section is repealed as of January 1, 1994.

SEC. 16. Section 12078 is added to the Penal Code, to read:

12078. (a) (1) The preceding provisions of this article, except subdivision (e) of Section 12076, do not apply to deliveries, sales, or transfers of firearms made to persons properly identified as full-time paid peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, provided that the peace officers are authorized by their employer to carry firearms while in the performance of their duties, nor to deliveries, sales, or transfers of firearms made to authorized representatives of cities, cities and counties, counties, state or federal governments for use by those governmental agencies. Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of his or her duties, and authorizing the purchase or transfer. The certification shall be delivered to the seller or transferor at the time of purchase or transfer and the purchaser or transferee shall identify himself or herself as the person authorized in the certification. On the day the delivery, sale, or transfer is made, where a peace officer is receiving the firearm, and either a dealer is not the seller or transferor, or is not otherwise the person responsible for the delivery of the firearm, or the sale or transfer is not conducted through a law enforcement agency pursuant to Section 12084, the peace officer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the seller or transferor, the buyer or transferee, the firearm as is indicated in Section 12077, together with the original certification. On the day the delivery, sale, or transfer is made, where a dealer is the transferor, seller, or otherwise responsible for delivery of the firearm, the dealer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12077, together with the original certification. On the day the delivery, sale, or transfer is made, where the transfer is conducted pursuant to Section 12084, the law enforcement agency shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12084, together with the original certification. The reports which peace officers shall complete shall be

provided to them by the department. No report need be submitted to the Department of Justice where a peace officer receiving the firearm received it from his or her employer in accordance with the applicable rules, regulations, or procedures of the employer.

(2) The preceding provisions of this article, except subdivision (e) of Section 12076, do not apply to deliveries, sales, or transfers of firearms made to peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 made pursuant to Section 10334 of the Public Contracts Code. On the day the delivery, sale, or transfer is made, and a dealer is not the person responsible for the delivery of the firearm or the transfer or sale is not conducted through a law enforcement agency pursuant to Section 12084, the peace officer receiving the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the seller or transferor, the buyer or transferee, and the firearm as is indicated in Section 12077. On the day the delivery, sale, or transfer is made, where a dealer is responsible for delivery of the firearm, the dealer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12077. On the day the delivery, sale, or transfer is made where the transfer is conducted pursuant to Section 12084, the law enforcement agency shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer or transferee and the firearm as is indicated in Section 12084. The reports which peace officers shall complete shall be the same as those set forth in paragraph (1) of this subdivision and shall be provided to them by the department.

(3) Subdivision (d) of Section 12072 does not apply to deliveries, sales, or transfers of firearms to authorized representatives of cities, cities and counties, counties, or state or federal governments for those governmental agencies where the entity is acquiring the weapon as part of an authorized, voluntary program where the entity is buying or receiving weapons from private individuals. Any weapons acquired pursuant to this subdivision shall be disposed of pursuant to the applicable provisions of Section 12028 or 12032.

(b) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(c) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of firearms by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family.

(2) As used in this subdivision, immediate family member means any one of the following relationships:

(A) Parent and child.

(B) Grandparent and grandchild.

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

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

(f) Subdivision (d) of Section 12072 shall not apply to the delivery, sale, or transfer of firearms by persons who reside in this state to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the delivery, sale, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(g) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent sale or transfer of a firearm, other than a pistol, revolver, or other firearm capable of being concealed upon the person, at auctions or similar events conducted by nonprofit mutual or public benefit corporations organized pursuant to the Corporations Code.

As used in this paragraph, the term "infrequent" shall not be construed to prohibit different local chapters of the same nonprofit corporation from conducting auctions or similar events, provided the individual local chapter conducts the auctions or similar events infrequently. It is the intent of the Legislature that different local chapters, representing different localities, be entitled to invoke the exemption created by this paragraph, notwithstanding the frequency with which other chapters of the same nonprofit corporation may conduct auctions of similar events.

(2) Subdivision (d) of Section 12072 shall not apply to the transfer of a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, if the firearm is donated for an auction or similar event described in paragraph (1) and the firearm is delivered to the nonprofit corporation immediately preceding, or contemporaneous with, the auction or similar event.

(3) The waiting period described in Sections 12071 and 12072 shall not apply to a dealer who delivers a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, at an auction or similar event described in paragraph (1), as authorized by subparagraph (C) of paragraph (1) of subdivision (b) of Section 12071. Within 48 hours of the delivery, sale, or transfer, the dealer shall forward by prepaid mail to the Department of Justice a report of the same as is indicated in paragraph (3) of subdivision (a) of Section 12077.

(h) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm for the purposes of shooting at targets if the loan occurs on the premises of a target facility which holds a business or regulatory license or on the premises of any club or organization organized for

the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(i) (1) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of firearms by operation of law if all the following conditions are met:

(A) The person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms.

(B) If the firearms are pistols, revolvers, or other firearms capable of being concealed upon the person, and the person is not a levying officer as defined in Section 481.140, 511.060, or 680.210 of the Code of Civil Procedure, the person, within 30 days of taking possession, shall forward by prepaid mail to the Department of Justice, a report of the same and the type of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports which individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(C) In the case of a transmutation of property between spouses made in accordance with Section 850 of the Family Code consisting of a pistol, revolver, or other firearm capable of being concealed upon the person, taking place on or after April 1, 1994, a basic firearm safety certificate shall be required.

(2) Subdivision (d) of Section 12072 shall not apply to a person who takes possession of a firearm by operation of law in a representative capacity who transfers ownership of the firearm to himself or herself in his or her individual capacity. In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, on and after April 1, 1994, that individual shall have a basic firearm safety certificate in order for the exemption set forth in this paragraph to apply.

(j) Subdivision (d) of Section 12072 shall not apply to deliveries, transfers, or returns of firearms made pursuant to Section 12028, 12028.5, or 12030.

(k) Section 12071 and subdivision (c) of Section 12072 shall not apply to:

(1) The delivery, sale, or transfer of unloaded firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person by a dealer to another dealer upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(2) The delivery, sale, or transfer of unloaded firearms by dealers to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(3) The delivery, sale, or transfer of unloaded firearms to a wholesaler if the firearms are being returned to the wholesaler and are intended as merchandise in the wholesaler's business.

(4) The delivery, sale, or transfer of unloaded firearms by one dealer to another dealer if the firearms are intended as merchandise in the receiving dealer's business upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(5) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to himself or herself.

(*l*) A person who is exempt from subdivision (d) of Section 12072 or is otherwise not required by law to report his or her acquisition, ownership, or disposal of a pistol, revolver, or other firearm capable of being concealed upon the person or who moves out of this state with his or her pistol, revolver, or other firearm capable of being concealed upon the person may submit a report of the same to the Department of Justice in a format prescribed by the department.

(m) Subdivision (d) of Section 12072 shall not apply to the delivery, sale, or transfer of unloaded firearms to a wholesaler as merchandise in the wholesaler's business by manufacturers or importers licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, or by another wholesaler, if the delivery, sale, or transfer is made in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(n) (1) The waiting period described in Section 12071 or 12072 shall not apply to the delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer in either of the following situations:

(A) The dealer is delivering the firearm to another dealer and it is not intended as merchandise in the receiving dealer's business.

(B) The dealer is delivering the firearm to himself or herself and it is not intended as merchandise in his or her business.

(2) In order for this subdivision to apply, both of the following shall occur:

(A) If the dealer is receiving the firearm from another dealer, the dealer receiving the firearm shall present proof to the dealer delivering the firearm that he or she is licensed pursuant to Section 12071.

(B) Whether the dealer is delivering, selling, or transferring the firearm to himself or herself or to another dealer, on the date that the delivery, sale, or transfer is made, the dealer delivering the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the purchaser or transferee as is indicated in paragraph (2) of subdivision (a) of Section 12077.

(o) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery, sale, or transfer of firearms regulated pursuant to Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275), if the delivery, sale, or transfer is conducted in accordance with the

applicable provisions of Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275).

(p) As used in this section:

(1) "Infrequent" has the same meaning as in paragraph (1) of subdivision (c) of Section 12070.

(2) "A person taking title or possession of firearms by operation of law" includes, but is not limited to, any of the following instances wherein an individual receives title to, or possession of, firearms:

(A) The executor or administrator of an estate if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property consisting of firearms pursuant to Section 850 of the Family Code.

(H) Firearms passing to a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.

(q) This section shall become operative on January 1, 1994.

SEC. 17. Section 12081 of the Penal Code is amended to read:

12081. A basic firearms safety certificate shall not be required for any of the following transactions:

(a) The delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to a dealer.

(b) The delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person between or to importers and manufacturers of firearms licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(c) The delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to an active member of the United States Armed Forces, the National Guard, the Air National Guard, and the active reserve components of the United States, who is properly identified. For purposes of this subdivision, proper identification includes the Armed Forces Identification Card, or other written documents certifying that the person is an active member of the United States Armed Forces, the National Guard, the Air National Guard, or the active reserve components of the United States.

(d) The delivery, sale, or transfer of a pistol, revolver, or other

firearm capable of being concealed upon the person to any person honorably discharged from the United States Armed Forces, the National Guard, the Air National Guard, or active reserve components of the United States who is properly identified. For purposes of this subdivision, proper identification includes a Retired Armed Forces Identification Card, or other written document certifying the person as being honorably discharged.

(e) The delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to any of the following persons who are properly identified:

(1) Any California or federal peace officer who is authorized to carry a firearm while on duty.

(2) Any honorably retired peace officer, as defined in Section 830.1, 830.2, or subdivision (c) of Section 830.5.

(3) Any honorably retired federal officers or agents who were authorized to, and did, carry firearms in the course and scope of their duties and are authorized to carry firearms pursuant to subdivision (i) of Section 12027.

(4) Any persons who have permits to carry pistols, revolvers, or other firearms capable of being concealed upon the person issued pursuant to Article 3 (commencing with Section 12050) of Chapter 1.

(5) Any persons who have a certificate of competency or a certificate of completion in hunter safety as provided in Article 2.5 (commencing with Section 3049) of Chapter 1 of Part 1 of Division 4 of the Fish and Game Code, which bears a hunter safety instruction validation stamp affixed thereto.

(6) Any person who holds a valid hunting license issued by the State of California.

(7) Any person who is authorized to carry loaded firearms pursuant to subdivision (c) or (d) of Section 12031.

(8) Any person who has been issued a certificate pursuant to Section 12033.

(9) Any basic firearms safety instructor certified by the department pursuant to Section 12805.

(10) Persons who are properly identified as authorized participants in shooting matches approved by the Director of Civilian Marksmanship pursuant to the applicable provisions of Title 10 of the United States Code.

(11) Persons who have successfully completed the course of training specified in Section 832.

SEC. 18. Section 12084 of the Penal Code is amended to read:

12084. (a) As used in this section, the following definitions shall control:

(1) "Agency" means a sheriff's department in a county of less than 200,000 persons, according to the most recent federal decennial census which elects to process purchases, sales, or transfers of firearms.

(2) "Seller" means the seller or transferor of a firearm.

(3) "Purchaser" means the purchaser or transferee of a firearm.

(4) "Purchase" means the purchase, sale, or transfer of a firearm.

(5) "Department" means the Department of Justice.

(6) "LEFT" means the Law Enforcement Firearms Transfer Form consisting of the transfer form utilized to purchase a firearm in accordance with this section.

(b) As an alternative to completing the sale or transfer of a firearm through a licensed dealer pursuant to Section 12082 in order to comply with the provisions of subdivision (d) of Section 12072, the parties to the purchase of a firearm may complete the transaction through an agency in accordance with this section in order to comply with the provisions of subdivision (d) of Section 12072.

(c) (1) LEFTs shall be prepared by the State Printer and shall be furnished to agencies on application at a cost to be determined by the Department of General Services for each 100 leaves in quintuplicate, one original and four duplicates for the making of carbon copies. The original and duplicate copies shall differ in color, and shall be in the form provided by this section. The State Printer, upon issuing the LEFT, shall forward to the department the name and address of the agency together with the series and sheet numbers on the LEFT. The LEFT shall not be transferable.

(2) The department shall prescribe the form of the LEFT. It shall be in the same exact format set forth in Section 12077, with the same distinct formats for firearms that are pistols, revolvers, and other firearms capable of being concealed upon the person and for firearms that are not pistols, revolvers, and other firearms capable of being concealed upon the person, except that instead of the listing of information concerning a dealer, the LEFT shall contain the name, telephone number, and address of the law enforcement agency.

(3) The original of each LEFT shall be retained in consecutive order. Each book of 50 originals shall become the permanent record of transactions that shall be retained not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, department employee designated by the Attorney General, or agents of the federal Bureau of Alcohol, Tobacco and Firearms upon the presentation of proper identification.

(4) Ink shall be used to complete each LEFT. The agency shall ensure that all information is provided legibly. The purchaser and seller shall be informed that incomplete or illegible information delays purchases.

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

(6) One firearm transaction shall be reported on each LEFT. For purposes of this paragraph, a "transaction" means a single sale or transfer of any number of firearms that are not pistols, revolvers, or

other firearms capable of being concealed upon the person between the same two persons.

(d) The following procedures shall be followed in processing the purchase:

(1) Without waiting for the conclusion of any waiting period to elapse, the seller shall immediately deliver the firearm to the agency solely to complete the LEFT. Upon completion of the LEFT, the firearm shall be immediately returned by the agency to the seller without waiting for the waiting period to elapse.

(2) The purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the agency. The agency shall require the purchaser to complete the original and one copy of the LEFT. An employee of the agency shall then affix his or her signature as a witness to the signature and identification of the purchaser.

(3) Two copies of the LEFT shall, on that date of purchase, be placed in the mail, postage prepaid to the department at Sacramento. The third copy shall be provided to the purchaser and the fourth copy to the seller.

(4) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) If the department determines that the copies of the LEFT submitted to it pursuant to paragraph (3) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the firearm to be purchased, or if any fee required pursuant to paragraph (6) is not submitted by the agency in conjunction with submission of the copies of the LEFT, or if the department determines that the person is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the agency of that fact. Upon notification by the department, the purchaser shall submit any fee required pursuant to paragraph (6), as appropriate, and if notification by the department is received by the agency at any time prior to delivery of the firearm, the delivery of the firearm shall be withheld until the conclusion of the waiting period described in paragraph (7).

(6) The department and the agency may both charge a fee not to exceed the actual cost of processing the purchaser sufficient to reimburse both of the following:

(A) The agency for processing the transfer.

(B) The department for providing the information. The department shall charge the same fee as it would charge a dealer pursuant to Section 12082.

(7) The firearm shall not be delivered to the purchaser as follows:

(A) Prior to January 1, 1996, within 15 days of application for the

purchase or, after notice by the department pursuant to paragraph (5), within 15 days of the submission to the department of any fees required pursuant to this subdivision, or within 15 days of a corrected LEFT, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or after notice by the department pursuant to paragraph (5), within 15 days of the submission to the department of any fees required pursuant to this subdivision, or within 15 days of the submission to the department of corrected copies of the LEFT, whichever is later. On or after January 1, 1996, within 10 days of the application for purchase of a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, or after notice by the department pursuant to paragraph (5), or within 10 days of submission to the department of any fees required pursuant to this subdivision, or within 10 days of the submission to the department of corrected copies of the LEFT, whichever is later.

(B) Unless unloaded.

(C) In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, unless securely wrapped or in a locked container.

(D) Unless the purchaser presents clear evidence of his or her identity and age to the agency.

(E) Whenever the agency is notified by the department that the person is in a prohibited class described in Section 12021 or 12021.1 or Section 8100 or 8103 of the Welfare and Institutions Code.

(F) Unless done at the agency's premises.

(G) In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, commencing April 1, 1994, unless the purchaser presents to the seller a basic firearm safety certificate.

(e) The action of a law enforcement agency acting pursuant to Section 12084 shall be deemed to be a discretionary act within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(f) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, its acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(g) Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the LEFT is guilty of a misdemeanor.

(h) All sums received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund.

SEC. 19. Section 12276 of the Penal Code is amended to read:

12276. As used in this chapter, "assault weapon" shall mean the

following designated semiautomatic firearms:

(a) All of the following specified rifles:

(1) All AK series including, but not limited to, the models identified as follows:

(A) Made in China AK, AKM, AKS, AK47, AK47S, 56, 56S, 84S, and 86S.

(B) Norinco 56, 56S, 84S, and 86S.

(C) Poly Technologies AKS and AK47.

(D) MAADI AK47 and ARM.

(2) UZI and Galil.

(3) Beretta AR-70.

(4) CETME Sporter.

(5) Colt AR-15 series.

(6) Daewoo K-1, K-2, Max 1, Max 2, AR 100, and AR 110C.

(7) Fabrique Nationale FAL, LAR, FNC, 308 Match, and Sporter.

(8) MAS 223.

(9) HK-91, HK-93, HK-94, and HK-PSG-1.

(10) The following MAC types:

(A) RPB Industries Inc. sM10 and sM11.

(B) SWD Incorporated M11.

(11) SKS with detachable magazine.

(12) SIG AMT, PE-57, SG 550, and SG 551.

(13) Springfield Armory BM59 and SAR-48.

(14) Sterling MK-6.

(15) Steyer AUG.

(16) Valmet M62S, M71S, and M78S.

(17) Armalite AR-180.

(18) Bushmaster Assault Rifle.

(19) Calico M-900.

(20) J&R ENG M-68.

(21) Weaver Arms Nighthawk.

(b) All of the following specified pistols:

(1) UZI.

(2) Encom MP-9 and MP-45.

(3) The following MAC types:

(A) RPB Industries Inc. sM10 and sM11.

(B) SWD Incorporated M-11.

(C) Advance Armament Inc. M-11.

(D) Military Armament Corp. Ingram M-11.

(4) Intratec TEC-9.

(5) Sites Spectre.

(6) Sterling MK-7.

(7) Calico M-950.

(8) Bushmaster Pistol.

(c) All of the following specified shotguns:

(1) Franchi SPAS 12 and LAW 12.

(2) Striker 12.

(3) The Streetsweeper type S/S Inc. SS/12.

(d) Any firearm declared by the court pursuant to Section 12276.5

to be an assault weapon that is specified as an assault weapon in a list promulgated pursuant to Section 12276.5.

(e) The term "series" includes all other models that are only variations, with minor differences, of those models listed in subdivision (a), regardless of the manufacturer.

(f) This section is declaratory of existing law, as amended, and a clarification of the law and the Legislature's intent which bans the weapons enumerated in this section, the weapons included in the list promulgated by the Attorney General pursuant to Section 12276.5, and any other models which are only variations of those weapons with minor differences, regardless of the manufacturer. The Legislature has defined assault weapons as the types, series, and models listed in this section because it was the most effective way to identify and restrict a specific class of semiautomatic weapons.

SEC. 20. Section 12601 of the Penal Code is amended to read:

12601. (a) "Less lethal weapon" shall apply to and include any device which is designed to or which has been converted to expel or propel less lethal ammunition by any action, mechanism, or process for the purpose of incapacitating, immobilizing, or stunning a human being through the infliction of any less than lethal impairment of physical condition, function, or senses, including physical pain or discomfort. It is not necessary that a weapon leave any lasting or permanent incapacitation, discomfort, pain, or other injury or disability in order to qualify as a less lethal weapon.

(b) Less lethal weapon includes the frame or receiver of any weapon described in subdivision (a), but shall not include any of the following unless such part or weapon has been converted as described in subdivision (a):

(1) Pistol, revolver, or firearm as defined in Section 12001.

(2) Machinegun as defined in Section 12200.

(3) Rifle or shotgun using fixed ammunition consisting of standard primer and powder and not capable of being concealed upon the person.

(4) Pistols, rifles, and shotguns which are firearms having a barrel less than 0.18 inches in diameter and which are designed to expel a projectile by any mechanical means or by compressed air or gas.

(5) When used as designed or intended by the manufacturer, any weapon commonly regarded as a toy gun, and which as such is incapable of inflicting any impairment of physical condition, function, or senses.

(6) A destructive device as defined in Section 12301.

(7) A tear gas weapon as defined in Section 12402.

(8) A bow or crossbow designed to shoot arrows.

(9) A device commonly known as a slingshot.

(10) A device designed for the firing of stud cartridges, explosive rivets, or similar industrial ammunition.

(11) A device designed for signaling, illumination, or safety.

(12) An assault weapon as defined in Section 12276.

(c) "Less lethal ammunition" means any ammunition which (1)

is designed to be used in any less lethal weapon or any other kind of weapon (including, but not limited to, firearms, pistols, revolvers, shotguns, rifles, and spring, compressed air, and compressed gas weapons) and (2) when used in such less lethal weapon or other weapon is designed to immobilize or incapacitate or stun a human being through the infliction of any less than lethal impairment of physical condition, function, or senses, including physical pain or discomfort.

SEC. 20.5. Section 12809 of the Penal Code is amended to read:

12809. (a) Any person who has reason to believe that he or she does not need to complete the basic firearms safety course may take an objective test on the subject matter of the basic firearms safety course from an instructor certified by the department. The objective test shall contain written notice to the applicant on the top of the first page that he or she may not take the test more than twice within a six-month period.

(b) Any person receiving a passing grade on the test shall be immediately issued a basic firearms safety certificate by the instructor. When the objective test is being administered, the certified instructor may only give administrative instructions. Any person who fails to pass the objective test upon the first attempt shall be given additional instructional materials by the instructor such as a videotape or booklet. The person may not retake the objective test under any circumstances until 24 hours have elapsed after the failure to pass the objective test upon the first attempt. The person failing the test on the first attempt shall take another version of the test upon the second attempt. All tests shall be taken from the same instructor except upon permission of the department, which shall be granted only for good cause shown. The instructor shall make himself or herself available to the applicant during regular business hours in order to retake the test. If the person fails the objective test upon a second attempt, then the person shall attend the basic firearms safety course pursuant to Section 12805 in order to be issued a basic firearms safety certificate.

(c) The Department of Justice shall set the fee for taking the objective test and issuance of the basic firearms safety certificate at an amount commensurate with the actual cost to the department, but not to exceed twenty dollars ($20), ten dollars ($10) of which shall be forwarded to the department to cover its costs. The fee paid shall entitle the applicant to take the objective test twice if necessary. Commencing with the 1992–93 fiscal year, the department may submit a budget change proposal to the Department of Finance if funds beyond those funds otherwise appropriated to the department are required for the startup costs of the programs specified in this article. The Department of Finance shall transfer funds from any general or nongeneral fund special account used by the Department of Justice to the Firearms Safety Training Fund Special Account as a loan of those funds. Any funds received by the department pursuant to the budget change proposal submitted pursuant to this

section shall be immediately reimbursed from the Firearms Safety Training Fund Special Account as funds in that account are available back to the special account from which the funds were borrowed. Any loan shall, in any event, be repaid within four years.

(d) (1) If a dealer licensed pursuant to Section 12071 or his or her employee, or where the managing officer or partner is certified as an instructor pursuant to this article, he or she shall also comply with all of the following provisions:

(A) Designate a separate room or partitioned area for a person to take the objective test.

(B) Maintain adequate supervision to assure that no acts of collusion occur while the objective test is being administered.

(2) If the provisions specified in paragraph (1) cannot be complied with, the applicant shall be advised that he or she may take the objective test wherever the basic firearms safety course is being offered.

SEC. 21. Section 13511.5 of the Penal Code is amended to read:

13511.5. Each applicant for admission to a basic course of training certified by the Commission on Peace Officer Standards and Training who is not sponsored by a local or other law enforcement agency, or is not a peace officer employed by a state or local agency, department, or district, shall be required to submit written certification from the Department of Justice pursuant to Sections 11122, 11123, and 11124 that the applicant has no criminal history background which would disqualify him or her, pursuant to Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code, from owning, possessing, or having under his or her control a firearm.

SEC. 22. Section 8102 of the Welfare and Institutions Code is amended to read:

8102. (a) Whenever a person, who has been detained or apprehended for examination of his or her mental condition or who is a person described in Section 8100 or 8103, is found to own, have in his or her possession or under his or her control, any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon shall be confiscated by any law enforcement agency or peace officer, who shall retain custody of the firearm or other deadly weapon.

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

(b) Upon confiscation of any firearm or other deadly weapon from a person who has been detained or apprehended for examination of his or her mental condition, the peace officer or law enforcement agency shall notify the person of the procedure for the return of any firearm or other deadly weapon which has been confiscated.

Where the person is released, the professional person in charge of the facility, or his or her designee, shall notify the person of the procedure for the return of any firearm or other deadly weapon

which may have been confiscated.

Health facility personnel shall notify the confiscating law enforcement agency upon release of the detained person, and shall make a notation to the effect that the facility provided the required notice to the person regarding the procedure to obtain return of any confiscated firearm.

(c) Upon the release of a person as described in subdivision (b), the confiscating law enforcement agency shall have 10 days, unless good cause is shown, to initiate a petition in the superior court for a hearing to determine whether the return of a firearm or other deadly weapon would be likely to result in endangering the person or others, and to send a notice advising the person of his or her right to a hearing on this issue.

(d) The law enforcement agency shall inform the person that he or she has 30 days to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond will result in a default order forfeiting the confiscated firearm or weapon. For the purpose of this subdivision, the person's last known address shall be the address provided to the law enforcement officer by the person at the time of the person's detention or apprehension.

(e) If the person responds and requests a hearing, the court clerk shall set a hearing, no later than 30 days from receipt of the request. The court clerk shall notify the person and the district attorney of the date, time, and place of the hearing.

(f) If the person does not respond within 30 days of the notice, the law enforcement agency may file a petition for order of default.

(g) If the law enforcement agency does not initiate proceedings within the 10-day period, it shall make the weapon available for return.

SEC. 23. Section 9.5 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by both this bill and AB 1648. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 12071 of the Penal Code, and (3) this bill is enacted after AB 1648, in which case Section 12071 of the Penal Code, as amended by Section 9 of this bill, shall remain operative only until the operative date of AB 1648, at which time Section 9.5 of this bill shall become operative.

SEC. 24. Any amendment to Section 6254 of the Government Code made by SB 60, SB 798, or AB 1957, which takes effect on or before January 1, 1994, shall prevail over amendments to that section made by this bill, whether the bill is chaptered before or after this bill.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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

SEC. 26. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to correct errors in Chapter 1326 of the Statutes of 1992, it is necessary that this act take effect immediately as an urgency statute.

CHAPTER 607

An act to amend Sections 273d and 12022.7 of the Penal Code, relating to child abuse.

[Approved by Governor September 29, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 273d of the Penal Code is amended to read:

273d. (a) Any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony, punishable by imprisonment in the state prison for two, four, or six years, or in a county jail for not more than one year, by a fine of up to six thousand dollars ($6,000), or by both that imprisonment and fine.

(b) Any person who is found guilty of violating subdivision (a) shall receive a four-year enhancement for a prior conviction of that offense provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction.

(c) If a person is convicted of violating this section and probation is granted, the court shall require supervised counseling as a condition of probation unless, considering all of the facts and circumstances, the court finds counseling inappropriate for the defendant.

SEC. 1.5. Section 273d of the Penal Code is amended to read:

273d. (a) Any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony, punishable by imprisonment in the state prison for two, four, or six years, or in a county jail for not more than one year, by a fine of up to six thousand dollars ($6,000), or by both that imprisonment and fine.

(b) Any person who is found guilty of violating subdivision (a)

shall receive a four-year enhancement for a prior conviction of that offense provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction.

(c) Any person who willfully inflicts upon any child any cruel or inhuman corporal punishment or injury which is the direct cause of the death of the child within the period specified in Section 194 is guilty of a felony, punishable by imprisonment in the state prison for three, six, or nine years.

Nothing in this subdivision shall be construed as affecting the applicability of subdivision (a) of Section 187 or Section 192.

(d) If a person is convicted of violating this section and probation is granted, the court shall require supervised counseling as a condition of probation unless, considering all of the facts and circumstances, the court finds counseling inappropriate for the defendant.

SEC. 2. Section 12022.7 of the Penal Code is amended to read:

12022.7. (a) Any person who, with the intent to inflict the injury, personally inflicts great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony shall, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three years, unless infliction of great bodily injury is an element of the offense of which the person is convicted.

(b) Any person who is found to have inflicted great bodily injury pursuant to subdivision (a) which causes the victim to become comatose due to brain injury or to suffer paralysis, as defined in Section 12022.9, of a permanent nature, shall be punished by an additional and consecutive term of five years.

(c) As used in this section, "great bodily injury" means a significant or substantial physical injury.

(d) This section shall not apply to murder or manslaughter or a violation of Section 451 or 452. The additional term provided in this section shall not be imposed unless the fact of great bodily injury is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(e) The court shall impose additional terms of imprisonment under either subdivision (a) or (b), but may not impose both terms for the same offense.

SEC. 3. Section 12022.7 of the Penal Code is amended to read:

12022.7. (a) Any person who, with the intent to inflict the injury, personally inflicts great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony shall, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three years, unless infliction of great bodily injury is an element of the offense of which

he or she is convicted.

(b) Any person who is found to have inflicted great bodily injury pursuant to subdivision (a) which causes the victim to become comatose due to brain injury or to suffer paralysis, as defined in Section 12022.9, of a permanent nature, shall be punished by an additional and consecutive term of five years.

(c) Any person who, with the intent to inflict such injury, personally inflicts great bodily injury on another person who is 70 years of age or older other than an accomplice in the commission or attempted commission of a felony shall, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of five years, unless infliction of great bodily injury is an element of the offense of which he or she is convicted.

(d) As used in this section, great bodily injury means a significant or substantial physical injury.

(e) This section shall not apply to murder or manslaughter or a violation of Section 451 or 452. The additional term provided in this section shall not be imposed unless the fact of great bodily injury is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(f) The court shall impose the additional terms of imprisonment under either subdivision (a), (b), or (c), but may not impose more than one of those terms for the same offense.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 273d of the Penal Code proposed by both this bill and SB 935. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 273d of the Penal Code, and (3) this bill is enacted after SB 935, in which case Section 1 of this bill shall not become operative.

SEC. 5. Section 3 of this bill incorporates amendments to Section 12022.7 of the Penal Code proposed by both this bill and AB 1549. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 12022.7 of the Penal Code, and (3) this bill is enacted after AB 1549, in which case Section 2 of this bill shall not become operative.

CHAPTER 608

An act to amend Section 12022.7 of the Penal Code, relating to crime.

[Approved by Governor September 29, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 12022.7 of the Penal Code is amended to read:

12022.7. (a) Any person who, with the intent to inflict such injury, personally inflicts great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony shall, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three years, unless infliction of great bodily injury is an element of the offense of which he or she is convicted.

(b) Any person who, with the intent to inflict such injury, personally inflicts great bodily injury on another person who is 70 years of age or older other than an accomplice in the commission or attempted commission of a felony shall, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of five years, unless infliction of great bodily injury is an element of the offense of which he or she is convicted.

(c) As used in this section, great bodily injury means a significant or substantial physical injury.

(d) This section shall not apply to murder or manslaughter or a violation of Section 451 or 452. The additional term provided in this section shall not be imposed unless the fact of great bodily injury is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(e) The court shall impose the additional terms of imprisonment under either subdivision (a) or (b), but may not impose both terms for the same offense.

SEC. 2. Section 12022.7 of the Penal Code is amended to read:

12022.7. (a) Any person who, with the intent to inflict such injury, personally inflicts great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony shall, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three years, unless infliction of great bodily injury is an element of the offense of which he or she is convicted.

(b) Any person found to have inflicted great bodily injury pursuant to subdivision (a) which causes the victim to become

comatose due to brain injury or to suffer paralysis, as defined in Section 12022.9, of a permanent nature, shall be punished by an additional and consecutive term of five years.

(c) Any person who, with the intent to inflict such injury, personally inflicts great bodily injury on another person who is 70 years of age or older other than an accomplice in the commission or attempted commission of a felony shall, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of five years, unless infliction of great bodily injury is an element of the offense of which he or she is convicted.

(d) As used in this section, "great bodily injury" means a significant or substantial physical injury.

(e) This section shall not apply to murder or manslaughter or a violation of Section 451 or 452. The additional term provided in this section shall not be imposed unless the fact of great bodily injury is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(f) The court shall impose the additional terms of imprisonment under either subdivision (a), (b), or (c), but may not impose more than one of those terms for the same offense.

SEC. 3. Section 12022.7 of the Penal Code is amended to read:

12022.7. (a) Any person who, with the intent to inflict the injury, personally inflicts great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony shall, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three years, unless infliction of great bodily injury is an element of the offense of which he or she is convicted.

(b) Any person who, with the intent to inflict such injury, personally inflicts great bodily injury on another person who is 70 years of age or older other than an accomplice in the commission or attempted commission of a felony shall, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of five years, unless infliction of great bodily injury is an element of the offense of which he or she is convicted.

(c) As used in this section, great bodily injury means a significant or substantial physical injury.

(d) Notwithstanding subdivision (a), the additional term provided by this section may be imposed in cases of premises invasion, as described in Section 465.

(e) This section shall not apply to murder or manslaughter or a violation of Section 451 or 452. The additional term provided in this section shall not be imposed unless the fact of great bodily injury is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(f) The court shall impose the additional terms of imprisonment

under either subdivision (a) or (b), but may not impose both terms for the same offense.

SEC. 4. Section 12022.7 of the Penal Code is amended to read:

12022.7. (a) Any person who, with the intent to inflict the injury, personally inflicts great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony shall, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three years, unless infliction of great bodily injury is an element of the offense of which he or she is convicted.

(b) Any person found to have inflicted great bodily injury pursuant to subdivision (a) which causes the victim to become comatose due to brain injury or to suffer paralysis, as defined in Section 12022.9, of a permanent nature, shall be punished by an additional and consecutive term of five years.

(c) Any person who, with the intent to inflict such injury, personally inflicts great bodily injury on another person who is 70 years of age or older other than an accomplice in the commission or attempted commission of a felony shall, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of five years, unless infliction of great bodily injury is an element of the offense of which he or she is convicted.

(d) As used in this section, "great bodily injury" means a significant or substantial physical injury.

(e) Notwithstanding subdivision (a), the additional term provided by this section may be imposed in cases of premises invasion, as described in Section 465.

(f) This section shall not apply to murder or manslaughter or a violation of Section 451 or 452. The additional term provided in this section shall not be imposed unless the fact of great bodily injury is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(g) The court shall impose the additional terms of imprisonment under either subdivision (a), (b), or (c), but may not impose more than one of those terms for the same offense.

SEC. 5. (a) Section 2 of this bill incorporates amendments to Section 12022.7 of the Penal Code proposed by both this bill and SB 529. It shall only become operative if (1) both bills are enacted and become effective January 1, 1994, (2) each bill amends Section 12022.7 of the Penal Code, (3) AB 1957 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 529, in which case Sections 1, 3, and 4 of this bill shall not become operative.

(b) Section 3 of this bill incorporates amendments to Section 12022.7 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective January 1, 1994, (2) each bill amends Section 12022.7 of the

Penal Code, (3) SB 529 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1957, in which case Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates amendments to Section 12022.7 of the Penal Code proposed by this bill, SB 529, and AB 1957. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1994, (2) all three bills amend Section 12022.7 of the Penal Code, and (3) this bill is enacted after SB 529 and AB 1957, in which case Sections 1, 2, and 3 of this bill shall not become operative.

CHAPTER 609

An act to amend Sections 189, 190, and 12022.5 of the Penal Code, relating to murder.

[Approved by Governor September 29, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 189 of the Penal Code is amended to read:

189. All murder which is perpetrated by means of a destructive device or explosive, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 286, 288, 288a, or 289, or any murder which is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree. All other kinds of murders are of the second degree.

As used in this section, "destructive device" means any destructive device as defined in Section 12301, and "explosive" means any explosive as defined in Section 12000 of the Health and Safety Code.

To prove the killing was "deliberate and premeditated," it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

SEC. 2. Section 189 of the Penal Code is amended to read:

189. All murder which is perpetrated by means of a destructive device or explosive, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 286, 288, 288a, or 289, or any murder which is perpetrated by means of discharging a

firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree. All other kinds of murders are of the second degree.

As used in this section, "destructive device" means any destructive device as defined in Section 12301, and "explosive" means any explosive as defined in Section 12000 of the Health and Safety Code.

To prove the killing was "deliberate and premeditated," it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

SEC. 3. Section 190 of the Penal Code is amended to read:

190. (a) Every person guilty of murder in the first degree shall suffer death, confinement in the state prison for life without the possibility of parole, or confinement in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

Except as provided in subdivision (b) or (c), every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 15 years to life.

Except as provided in subdivision (b), Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 15, 20, or 25 years in the state prison imposed pursuant to this section, but the person shall not otherwise be released on parole prior to that time.

(b) Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 25 years to life if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a) or (b) of Section 830.2, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was such a peace officer engaged in the performance of his or her duties.

Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce any minimum term of 25 years in the state prison when the person is guilty of murder in the second degree and the victim was a peace officer, as defined in this subdivision, and the person shall not be released prior to serving 25 years confinement.

(c) Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 20 years to life if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury.

Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 20 years in the state prison when the person is guilty of murder in the second degree and is subject to this subdivision, but the person shall not otherwise be released on parole prior to that time.

SEC. 4. Section 12022.5 of the Penal Code is amended to read:

12022.5. (a) Except as provided in subdivisions (b) and (c), any

person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years, unless use of a firearm is an element of the offense of which he or she was convicted. The court shall order imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state its reasons for its enhancement choice on the record at the time of sentencing.

(b) (1) Notwithstanding subdivision (a), any person who is convicted of a felony or an attempt to commit a felony, including murder or attempted murder, in which that person discharged a firearm at an occupied motor vehicle which caused great bodily injury or death to the person of another, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for five years.

(2) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 12276, or a machinegun, as defined in Section 12200, in the commission or attempted commission of a felony, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for five years.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who personally uses a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall order the imposition of middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record.

(d) The additional term provided by this section may be imposed in cases of assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or assault with a deadly weapon which is a firearm under Section 245, or murder if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death.

(e) When a person is found to have personally used a firearm, an assault weapon, or a machinegun in the commission or attempted

commission of a felony as provided in this section and the firearm, assault weapon, or machinegun is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

SEC. 5. Section 12022.5 of the Penal Code is amended to read:

12022.5. (a) Except as provided in subdivisions (b) and (c), any person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years, unless use of a firearm is an element of the offense of which he or she was convicted. However, if the person has been convicted of carjacking or attempted carjacking, the additional term shall be four, five, or six years. The court shall order imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state its reasons for its enhancement choice on the record at the time of sentencing.

(b) (1) Notwithstanding subdivision (a), any person who is convicted of a felony or an attempt to commit a felony, including murder or attempted murder, in which that person discharged a firearm at an occupied motor vehicle which caused great bodily injury or death to the person of another, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for five years.

(2) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 12276, or a machinegun, as defined in Section 12200, in the commission or attempted commission of a felony, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for five years.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who personally uses a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall order the imposition of middle term unless there are circumstances in

aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record.

(d) The additional term provided by this section may be imposed in cases of assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or assault with a deadly weapon which is a firearm under Section 245, or murder if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death.

(e) When a person is found to have personally used a firearm, an assault weapon, or a machinegun in the commission or attempted commission of a felony as provided in this section and the firearm, assault weapon, or machinegun is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

SEC. 6. Section 2 of this act affects an initiative statute, and shall become effective only when submitted to and approved by the voters pursuant to subdivision (c) of Section 10 of Article II of the California Constitution.

SEC. 7. Section 2 of this bill incorporates amendments to Section 189 of the Penal Code proposed by this bill and SB 60. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 189 of the Penal Code, and (3) this bill is enacted after SB 60, in which case Section 189 of the Penal Code, as amended by SB 60, shall remain operative only until the operative date of this bill, at which time Section 2 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 8. Section 5 of this bill incorporates amendments to Section 12022.5 of the Penal Code proposed by this bill and SB 60. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 189 of the Penal Code, and (3) this bill is enacted after SB 60, in which case Section 12022.5 of the Penal Code, as amended by SB 60, shall remain operative only until the operative date of this bill, at which time Section 5 of this bill shall become operative, and Section 4 of this bill shall not become operative.

CHAPTER 610

An act to amend Section 6254 of the Government Code, to amend Sections 27, 186.22, 189, 520, 653f, 653j, 666, 667.5, 667.7, 667.9, 786, 868.5, 999e, 1170.1, 1192.7, 1202.5, 1203, 1203.055, 1203.06, 1203.075, 1203.08, 1203.09, 1601, 3057, 11105.3, 12021.1, 12022, 12022.5, and 13853 of, and to add Sections 209.5 and 215 to, the Penal Code, and to amend Sections 676, 707, 4514, 5328.4, 6500, and 8103 of the Welfare and Institutions Code, relating to crime, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

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

SECTION 1. Section 6254 of the Government Code, as amended by Section 2 of Chapter 1128 of the Statutes of 1992, is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or

market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files which reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and

current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, which reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or which provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, which reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or which provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services which is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or

amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time that a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals which has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, which relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department which indicates when or where the applicant is vulnerable to attack or which concerns the applicant's medical or psychological history or that of members of his or her family.

(v) Residence addresses contained in licensure applications and registration applications for collection agencies as may be required by the Bureau of Collection and Investigative Services of the Department of Consumer Affairs pursuant to Sections 6876.2, 6877, 6878, and 6894.3 of the Business and Professions Code.

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and which reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991,

the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(x) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 1.2. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public

agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, premises invasion, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and

local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height , weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with

the collection of local taxes that is received in confidence and where the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512) Chapter 10.5 (commencing with Section 3525) , and Chapter 12 (commencing with Section 3560) of Division 4 , that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of

Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time that a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(v) Residence addresses contained in licensure applications and registration applications for collection agencies as may be required by the Bureau of Collection and Investigative Services of the Department of Consumer Affairs pursuant to Sections 6876.2, 6877, 6878, and 6894.3 of the Business and Professions Code.

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts, and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(x) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire

contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 1.3. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files

compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files which reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height, and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by

Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United

States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512) , Chapter 10.5 (commencing with Section 3525) , and Chapter 12 (commencing with Section 3560), of Division 4 of Title 1, which reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or which provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089), of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, which reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or which provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services which is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time that a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred

places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals which has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600), or Article 8 (commencing with Section 37650), of Chapter 5 of Division 3 of Title 4 of this code, which relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department which indicates when or where the applicant is vulnerable to attack or which concerns the applicant's medical or psychological history or that of members of his or her family.

(v) Residence addresses contained in licensure applications and registration applications for collection agencies as may be required by the Bureau of Collection and Investigative Services of the Department of Consumer Affairs pursuant to Sections 6876.2, 6877, 6878, and 6894.3 of the Business and Professions Code.

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and which reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to

inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts, and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(x) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

This section shall become operative on July 1, 1993.

SEC. 1.4. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files which reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum

materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512) , Chapter 10.5 (commencing with Section 3525) , and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, which reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or which provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, which reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or which provide instruction, advice, or training

to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services which is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time that a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals which has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, which relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department which indicates when or where the applicant is vulnerable to attack or which concerns the applicant's medical or psychological history or that of members of his or her family.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and which reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations,

meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded

accounts held in escrow for service contracts held in force in this state by a service contractor.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 1.5. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes,

except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, premises invasion, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height , weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the

victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and where the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of

individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512) , Chapter 10.5 (commencing with Section 3525) , and Chapter 12 (commencing with Section 3560) of Division 4 , that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time that a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on

Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 1.6. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, premises invasion, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height , weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and where the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying

the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512) , Chapter 10.5 (commencing with Section 3525) , and Chapter 12 (commencing with Section 3560) of Division 4 , that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089), of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product,

theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time that a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600), or Article 8 (commencing with Section 37650), of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(v) Residence addresses contained in licensure applications and registration applications for collection agencies as may be required by the Bureau of Collection and Investigative Services of the Department of Consumer Affairs pursuant to Sections 6876.2, 6877, 6878, and 6894.3 of the Business and Professions Code.

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts, and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(x) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

This section shall become operative on July 1, 1993.

SEC. 1.7. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose

the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files which reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height, and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one

crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which

are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512) , Chapter 10.5 (commencing with Section 3525) , and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, which reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or which provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089), of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, which reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or which provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services which is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time that a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals which has been transmitted to the State Department of Health Services pursuant to subdivision (b) of

Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600), or Article 8 (commencing with Section 37650), of Chapter 5 of Division 3 of Title 4 of this code, which relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department which indicates when or where the applicant is vulnerable to attack or which concerns the applicant's medical or psychological history or that of members of his or her family.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and which reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts, and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with

Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

This section shall not become operative until July 1, 1993.

SEC. 1.8. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, premises invasion, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every

individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height , weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and where the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum

materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512) , Chapter 10.5 (commencing with Section 3525) , and Chapter 12 (commencing with Section 3560), of Division 4 , that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089), of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training

to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time that a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650), of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations,

meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded

accounts held in escrow for service contracts held in force in this state by a service contractor.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

This section shall not become operative until July 1, 1993.

SEC. 2. Section 27 of the Penal Code is amended to read:

27. (a) The following persons are liable to punishment under the laws of this state:

(1) All persons who commit, in whole or in part, any crime within this state.

(2) All who commit any offense without this state which, if committed within this state, would be larceny, carjacking, robbery, or embezzlement under the laws of this state, and bring the property stolen or embezzled, or any part of it, or are found with it, or any part of it, within this state.

(3) All who, being without this state, cause or aid, advise or encourage, another person to commit a crime within this state, and are afterwards found therein.

(b) Perjury, in violation of Section 118, is punishable also when committed outside of California to the extent provided in Section 118.

SEC. 3. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the

reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in the county jail.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in

Section 136.1.

(8) Carjacking, as defined in Section 215.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (7), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall become operative on January 1, 1993.

(h) This section shall remain in effect only until January 1, 1997, and on that date is repealed, unless a later enacted statute which is enacted before January 1, 1997, deletes or extends that date.

SEC. 3.02. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in the

county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in the county jail.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(9) Carjacking, as defined in Section 215.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (9), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in

a pattern of criminal gang activity.

(g) This section shall remain in effect only until January 1, 1997, and on that date is repealed.

SEC. 3.06. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony that is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, that is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in a county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in

this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Premises invasion of the first degree, in violation of Section 465.

(9) Carjacking, as defined in Section 215.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (9), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall become operative on January 1, 1993.

(h) This section shall remain in effect only until January 1, 1997, and on that date is repealed, unless a later enacted statute that is enacted before January 1, 1997, deletes or extends that date.

SEC. 3.08. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the

county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) (1) Except as provided in paragraph (4), any person who is convicted of a felony which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion.

(2) If the underlying felony in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion.

(3) The court shall order the imposition of the middle term of the sentence enhancements in paragraphs (1) and (2), unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(4) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in a county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two

or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Carjacking, as defined in Section 215.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (8), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall become operative on January 1, 1993.

(h) This section shall remain in effect only until January 1, 1997, and on that date is repealed, unless a later enacted statute which is enacted before January 1, 1997, deletes or extends that date.

SEC. 3.09. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished

by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of the offenses occurred after the effective date of this chapter and the last of the offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Burglary, as defined in Section 459.

(9) Rape, as defined in Section 261.

(10) Looting, as defined in Section 463.

(11) Moneylaundering, as defined in Section 186.10.

(12) Kidnapping, as defined in Section 207.

(13) Mayhem, as defined in Section 203.

(14) Aggravated mayhem, as defined in Section 205.

(15) Torture, as defined in Section 206.

(16) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).

(17) Felony extortion, as defined in Sections 518 and 520.

(18) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(19) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(20) Carjacking, as defined in Section 215.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (20), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall become operative on January 1, 1993.

(h) This section shall remain in effect only until January 1, 1997, and on that date is repealed, unless a later enacted statute which is enacted before January 1, 1997, deletes or extends that date.

SEC. 3.1. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony that is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary,

vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of the offenses occurred after the effective date of this chapter and the last of the offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Premises invasion of the first degree, in violation of Section

465.

(9) Carjacking, as defined in Section 215.

(10) Burglary, as defined in Section 459.

(11) Rape, as defined in Section 261.

(12) Looting, as defined in Section 463.

(13) Moneylaundering, as defined in Section 186.10.

(14) Kidnapping, as defined in Section 207.

(15) Mayhem, as defined in Section 203.

(16) Aggravated mayhem, as defined in Section 205.

(17) Torture, as defined in Section 206.

(18) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).

(19) Felony extortion, as defined in Sections 518 and 520.

(20) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(21) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (21), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall become operative on January 1, 1993.

(h) This section shall remain in effect only until January 1, 1997, and on that date is repealed, unless a later enacted statute that is enacted before January 1, 1997, deletes or extends that date.

SEC. 3.2. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony that is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the

facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, that is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in a county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(9) Carjacking, as defined in Section 215.

(10) Premises invasion of the first degree, in violation of Section 465.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (10), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall remain in effect only until January 1, 1997, and on that date is repealed.

SEC. 3.3. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) (1) Except as provided in paragraph (4), any person who is convicted of a felony which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion.

(2) If the underlying felony in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion.

(3) The court shall order the imposition of the middle term of the sentence enhancements in paragraphs (1) and (2), unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(4) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in a county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Grand theft of any vehicle, trailer, or vessel, as described in

Section 487h.

(9) Carjacking, as defined in Section 215.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (9), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall remain in effect only until January 1, 1997, and on that date is repealed.

SEC. 3.4. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) (1) Except as provided in paragraph (4), any person who is convicted of a felony that is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion.

(2) If the underlying felony in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion.

(3) The court shall order the imposition of the middle term of the sentence enhancements in paragraphs (1) and (2), unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(4) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, that is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a

county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in a county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Premises invasion of the first degree, in violation of Section 465.

(9) Carjacking, as defined in Section 215.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (9), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in

a pattern of criminal gang activity.

(g) This section shall become operative on January 1, 1993.

(h) This section shall remain in effect only until January 1, 1997, and on that date is repealed, unless a later enacted statute that is enacted before January 1, 1997, deletes or extends that date.

SEC. 3.5. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity"

means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of the offenses occurred after the effective date of this chapter and the last of the offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Burglary, as defined in Section 459.

(9) Rape, as defined in Section 261.

(10) Looting, as defined in Section 463.

(11) Moneylaundering, as defined in Section 186.10.

(12) Kidnapping, as defined in Section 207.

(13) Mayhem, as defined in Section 203.

(14) Aggravated mayhem, as defined in Section 205.

(15) Torture, as defined in Section 206.

(16) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).

(17) Felony extortion, as defined in Sections 518 and 520.

(18) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(19) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(20) Carjacking, as defined in Section 215.

(21) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (21), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall become operative on January 1, 1993.

(h) This section shall remain in effect only until January 1, 1997, and on that date is repealed, unless a later enacted statute which is enacted before January 1, 1997, deletes or extends that date.

SEC. 3.6. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraph (4), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion.

(2) If the underlying felony in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years at the court's discretion.

(3) The court shall order the imposition of the middle term of the sentence enhancements in paragraphs (1) and (2), unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(4) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of the offenses occurred after the effective date of this chapter and the last of the offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Carjacking, as defined in Section 215.

(9) Burglary, as defined in Section 459.

(10) Rape, as defined in Section 261.

(11) Looting, as defined in Section 463.

(12) Moneylaundering, as defined in Section 186.10.

(13) Kidnapping, as defined in Section 207.

(14) Mayhem, as defined in Section 203.

(15) Aggravated mayhem, as defined in Section 205.

(16) Torture, as defined in Section 206.

(17) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).

(18) Felony extortion, as defined in Sections 518 and 520.

(19) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(20) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (20), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall become operative on January 1, 1993.

(h) This section shall remain in effect only until January 1, 1997, and on that date is repealed, unless a later enacted statute which is enacted before January 1, 1997, deletes or extends that date.

SEC. 3.7. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony that is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of the

offenses occurred after the effective date of this chapter and the last of the offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Premises invasion of the first degree, in violation of Section 465.

(9) Carjacking, as defined in Section 215.

(10) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(11) Burglary, as defined in Section 459.

(12) Rape, as defined in Section 261.

(13) Looting, as defined in Section 463.

(14) Moneylaundering, as defined in Section 186.10.

(15) Kidnapping, as defined in Section 207.

(16) Mayhem, as defined in Section 203.

(17) Aggravated mayhem, as defined in Section 205.

(18) Torture, as defined in Section 206.

(19) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).

(20) Felony extortion, as defined in Sections 518 and 520.

(21) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(22) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (22), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall remain in effect only until January 1, 1997, and on that date is repealed.

SEC. 3.8. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraph (4), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion.

(2) If the underlying felony in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years at the court's discretion.

(3) The court shall order the imposition of the middle term of the sentence enhancements in paragraphs (1) and (2), unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(4) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two

or more of the following offenses, provided at least one of the offenses occurred after the effective date of this chapter and the last of the offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances, as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Burglary, as defined in Section 459.

(9) Rape, as defined in Section 261.

(10) Looting, as defined in Section 463.

(11) Moneylaundering, as defined in Section 186.10.

(12) Kidnapping, as defined in Section 207.

(13) Mayhem, as defined in Section 203.

(14) Aggravated mayhem, as defined in Section 205.

(15) Torture, as defined in Section 206.

(16) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).

(17) Felony extortion, as defined in Sections 518 and 520.

(18) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(19) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(20) Carjacking, as defined in Section 215.

(21) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (21), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall remain in effect only until January 1, 1997,

and on that date is repealed.

SEC. 3.9. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) (1) Except as provided in paragraph (4), any person who is convicted of a felony that is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion.

(2) If the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion.

(3) The court shall order the imposition of the middle term of the sentence enhancements in paragraphs (1) and (2), unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, that is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in a county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section

or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of the offenses occurred after the effective date of this chapter and the last of the offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(9) Carjacking, as defined in Section 215.

(10) Premises invasion of the first degree, in violation of Section 465.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (10), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall remain in effect only until January 1, 1997, and on that date is repealed.

SEC. 3.10. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a

county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraph (4), any person who is convicted of a felony that is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion.

(2) If the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion.

(3) The court shall order the imposition of the middle term of the sentence enhancements in paragraphs (1) and (2), unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(4) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of the offenses occurred after the effective date of this chapter and the last of the offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section

211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Burglary, as defined in Section 459.

(9) Rape, as defined in Section 261.

(10) Looting, as defined in Section 463.

(11) Moneylaundering, as defined in Section 186.10.

(12) Kidnapping, as defined in Section 207.

(13) Mayhem, as defined in Section 203.

(14) Aggravated mayhem, as defined in Section 205.

(15) Torture, as defined in Section 206.

(16) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).

(17) Felony extortion, as defined in Sections 518 and 520.

(18) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(19) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(20) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(21) Carjacking, as defined in Section 215.

(22) Premises invasion of the first degree, in violation of Section 465.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (22), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall remain in effect only until January 1, 1997, and on that date is repealed.

SEC. 4. Section 189 of the Penal Code is amended to read:

189. All murder which is perpetrated by means of a destructive device or explosive, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which

is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 286, 288, 288a, or 289, is murder of the first degree; and all other kinds of murders are of the second degree.

As used in this section, "destructive device" shall mean any destructive device as defined in Section 12301, and "explosive" shall mean any explosive as defined in Section 12000 of the Health and Safety Code.

To prove the killing was "deliberate and premeditated," it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

SEC. 4.5. Section 189 of the Penal Code is amended to read:

189. All murder which is perpetrated by means of a destructive device or explosive, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 286, 288, 288a, or 289, or any murder which is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree. All other kinds of murders are of the second degree.

As used in this section, "destructive device" means any destructive device as defined in Section 12301, and "explosive" means any explosive as defined in Section 12000 of the Health and Safety Code.

To prove the killing was "deliberate and premeditated," it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

SEC. 5. Section 209.5 is added to the Penal Code, to read:

209.5. (a) Any person who, during the commission of a carjacking and in order to facilitate the commission of the carjacking, kidnaps another person who is not a principal in the commission of the carjacking shall be punished by imprisonment in state prison for life with the possibility of parole.

(b) This section shall only apply if the movement of the victim is beyond that merely incidental to the commission of the carjacking, the victim is moved a substantial distance from the vicinity of the carjacking, and the movement of the victim increases the risk of harm to the victim over and above that necessarily present in the crime of carjacking itself.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

SEC. 6. Section 215 is added to the Penal Code, to read:

215. (a) "Carjacking" is the felonious taking of a motor vehicle in the possession of another, from his or her person or immediate presence, or from the person or immediate presence of a passenger of the motor vehicle, against his or her will and with the intent to either permanently or temporarily deprive the person in possession of the motor vehicle of his or her possession, accomplished by means of force or fear.

(b) Carjacking is punishable by imprisonment in the state prison for a term of three, five, or nine years.

(c) This section shall not be construed to supersede or affect Section 211. A person may be charged with a violation of this section and Section 211. However, no defendant may be punished under this section and Section 211 for the same act which constitutes a violation of both this section and Section 211.

SEC. 7. Section 520 of the Penal Code is amended to read:

520. Every person who extorts any money or other property from another, under circumstances not amounting to robbery or carjacking, by means of force, or any threat, such as is mentioned in Section 519, shall be punished by imprisonment in the state prison for two, three or four years.

SEC. 8. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who, with the intent that the crime be committed, solicits another to offer or accept or join in the offer or acceptance of a bribe, or to commit or join in the commission of carjacking, robbery, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, is punishable by imprisonment in the county jail not more than one year or in the state prison, or by fine of not more than ten thousand dollars ($10,000), or the amount which could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment.

(b) Every person who, with the intent that the crime be committed, solicits another to commit or join in the commission of murder is punishable by imprisonment in the state prison for three, six, or nine years.

(c) Every person who, with the intent that the crime be committed, solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or violence, or any violation of Section 264.1, 288, or 289, is punishable by imprisonment in a state prison for two, three or four years.

(d) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 11352, 11379, 11379.5, 11379.6, or 11391 of the Health and Safety Code shall be punished by imprisonment in the county jail for a period not

exceeding six months. Every person, who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, then the person convicted of the subsequent offense is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.

This subdivision does not apply where the term of imprisonment imposed under other provisions of law would result in a longer term of imprisonment.

(e) An offense charged in violation of subdivision (a), (b), or (c) shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) shall be proven by the testimony of one witness and corroborating circumstances.

SEC. 8.5. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who, with the intent that the crime be committed, solicits another to offer , accept, or join in the offer or acceptance of a bribe, or to commit or join in the commission of carjacking, robbery, premises invasion, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson, or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, shall be punished by imprisonment in a county jail for not more than one year or in the state prison, or by fine of not more than ten thousand dollars ($10,000), or the amount that could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment.

(b) Every person who, with the intent that the crime be committed, solicits another to commit or join in the commission of murder shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Every person who, with the intent that the crime be committed, solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or violence, or any violation of Section 264.1, 288, or 289, shall be punished by imprisonment in a state prison for two, three, or four years.

(d) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 11352, 11379, 11379.5, 11379.6, or 11391 of the Health and Safety Code shall be punished by imprisonment in a county jail for a period not exceeding six months. Every person, who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, then the person convicted of the subsequent offense shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

This subdivision does not apply where the term of imprisonment imposed under other provisions of law would result in a longer term of imprisonment.

(e) An offense charged in violation of subdivision (a), (b), or (c) shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) shall be proven by the testimony of one witness and corroborating circumstances.

SEC. 8.7. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who, with the intent that the crime be committed, solicits another to offer or accept or join in the offer or acceptance of a bribe, or to commit or join in the commission of carjacking, robbery, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, shall be punished by imprisonment in a county jail for not more than one year or in the state prison, or by a fine of not more than ten thousand dollars ($10,000), or the amount which could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment.

(b) Every person who, with the intent that the crime be committed, solicits another to commit or join in the commission of murder shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Every person who, with the intent that the crime be committed, solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or violence, or any violation of Section 264.1, 288, or 289, shall be punished by imprisonment in the state prison for two, three, or four years.

(d) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 11352, 11379, 11379.5, 11379.6, or 11391 of the Health and Safety Code shall be punished by imprisonment in a county jail not exceeding six months. Every person, who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

This subdivision does not apply where the term of imprisonment imposed under other provisions of law would result in a longer term of imprisonment.

(e) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 14014 of the Welfare and Institutions Code shall be punished by imprisonment in a county jail for not exceeding six months. Every person who, having been convicted of soliciting another to commit

an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

(f) An offense charged in violation of subdivision (a), (b), or (c) shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) or (e) shall be proven by the testimony of one witness and corroborating circumstances.

SEC. 8.9. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who, with the intent that the crime be committed, solicits another to offer , accept, or join in the offer or acceptance of a bribe, or to commit or join in the commission of carjacking, robbery, premises invasions, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson, or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, shall be punished by imprisonment in a county jail for not more than one year or in the state prison, or by a fine of not more than ten thousand dollars ($10,000), or the amount that could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment.

(b) Every person who, with the intent that the crime be committed, solicits another to commit or join in the commission of murder shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Every person who, with the intent that the crime be committed, solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or violence, or any violation of Section 264.1, 288, or 289, shall be punished by imprisonment in the state prison for two, three, or four years.

(d) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 11352, 11379, 11379.5, 11379.6, or 11391 of the Health and Safety Code shall be punished by imprisonment in a county jail not exceeding six months. Every person, who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

This subdivision does not apply where the term of imprisonment imposed under other provisions of law would result in a longer term of imprisonment.

(e) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 14014 of the Welfare and Institutions Code shall be punished by imprisonment in a county jail for not exceeding six months. Every

person who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

(f) An offense charged in violation of subdivision (a), (b), or (c) shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) or (e) shall be proven by the testimony of one witness and corroborating circumstances.

SEC. 9. Section 653j of the Penal Code is amended to read:

653j. (a) Every person 18 years of age or older who, in any voluntary manner, solicits, induces, encourages, or intimidates any minor with the intent that the minor shall commit a felony in violation of paragraph (1) of subdivision (c) of Section 136.1 or Section 187, 211, 215, 245, 246, 451, 459, or 520 of the Penal Code, or Section 10851 of the Vehicle Code, shall be punished by imprisonment in the state prison for a period of three, five, or seven years. If the minor is 16 years of age or older at the time of the offense, this section shall only apply when the adult is at least five years older than the minor at the time the offense is committed.

(b) In no case shall the court impose a sentence pursuant to subdivision (a) which exceeds the maximum penalty prescribed for the felony offense for which the minor was solicited, induced, encouraged, or intimidated to commit.

(c) Whenever a sentence is imposed under subdivision (a), the court shall consider the severity of the underlying crime as one of the circumstances in aggravation.

SEC. 9.3. Section 653j of the Penal Code is amended to read:

653j. (a) Every person 18 years of age or older who, in any voluntary manner, solicits, induces, encourages, or intimidates any minor with the intent that the minor shall commit a felony in violation of paragraph (1) of subdivision (c) of Section 136.1 or Section 187, 211, 215, 245, 246, 451, 459, 465, or 520 of the Penal Code, or Section 10851 of the Vehicle Code, shall be punished by imprisonment in the state prison for a period of three, five, or seven years. If the minor is 16 years of age or older at the time of the offense, this section shall only apply when the adult is at least five years older than the minor at the time the offense is committed.

(b) In no case shall the court impose a sentence pursuant to subdivision (a) that exceeds the maximum penalty prescribed for the felony offense for which the minor was solicited, induced, encouraged, or intimidated to commit.

(c) Whenever a sentence is imposed under subdivision (a), the court shall consider the severity of the underlying crime as one of the circumstances in aggravation.

SEC. 9.5. Section 666 of the Penal Code is amended to read:

666. Every person who, having been convicted of petit theft, grand theft, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496 and

having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of petit theft, then the person convicted of that subsequent offense is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.

SEC. 9.7. Section 666 of the Penal Code is amended to read:

666. Every person who, having been convicted of petit theft, grand theft, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, premises invasion, robbery, or a felony violation of Section 496 and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of petit theft, then the person convicted of that subsequent offense shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

SEC. 10. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) of subdivision (a) of Section 261.

(4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(6) Lewd acts on a child under the age of 14 years as defined in

Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5 or 12022.55.

(9) Any robbery perpetrated in an inhabited dwelling house, vessel, as defined in Section 21 of the Harbors and Navigation Code, which is inhabited and designed for habitation, an inhabited floating home as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, an inhabited trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(10) Arson in violation of subdivision (a) of Section 451.

(11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(12) Attempted murder.

(13) A violation of Section 12308.

(14) Kidnapping in violation of subdivision (b) of Section 207.

(15) Kidnapping as punished in subdivision (b) of Section 208.

(16) Continuous sexual abuse of a child in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a deadly or dangerous weapon as provided in subdivision (b) of Section 12022 in the commission of the carjacking.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for such extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole whichever first occurs including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 11. Section 667.7 of the Penal Code is amended to read:

667.7. (a) Any person convicted of a felony in which the person inflicted great bodily injury as provided in Section 12022.7, or personally used force which was likely to produce great bodily injury, who has served two or more prior separate prison terms as defined in Section 667.5 for the crime of murder; attempted murder; voluntary manslaughter; mayhem; rape by force, violence, or fear of immediate and unlawful bodily injury on the victim or another person; oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another

person; sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; lewd acts on a child under the age of 14 years by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; a violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; kidnapping as punished in subdivision (d) of Section 208, or for ransom, extortion, or robbery; robbery involving the use of force or a deadly weapon; assault with intent to commit murder; assault with a deadly weapon; carjacking, involving the use of a deadly weapon; assault with intent to commit murder; assault with a deadly weapon; assault with a force likely to produce great bodily injury; assault with intent to commit rape, sodomy, oral copulation, penetration of a vaginal or anal opening in violation of Section 289, or lewd and lascivious acts on a child; arson of a structure; escape or attempted escape by an inmate with force or violence in violation of subdivision (a) of Section 4530, or of Section 4532; exploding a device with intent to murder in violation of Section 12308; exploding a destructive device which causes bodily injury in violation of Section 12309, or mayhem or great bodily injury in violation of Section 12310; exploding a destructive device with intent to injure, intimidate, or terrify, in violation of Section 12303.3; any felony in which the person inflicted great bodily injury as provided in Section 12022.7; or any felony punishable by death or life imprisonment with or without the possibility of parole is a habitual offender and shall be punished as follows:

(1) A person who served two prior separate prison terms shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 20 years, or the term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046, whichever is greatest. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but the person shall not otherwise be released on parole prior to that time.

(2) Any person convicted of a felony specified in this subdivision who has served three or more prior separate prison terms, as defined in Section 667.5, for the crimes specified in subdivision (a) of this section shall be punished by imprisonment in the state prison for life without the possibility of parole.

(b) This section shall not prevent the imposition of the punishment of death or imprisonment for life without the possibility of parole. No prior prison term shall be used for this determination which was served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an

offense which results in a felony conviction. As used in this section, a commitment to the Department of the Youth Authority after conviction for a felony shall constitute a prior prison term. The term imposed under this section shall be imposed only if the prior prison terms are alleged under this section in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.

SEC. 12. Section 667.9 of the Penal Code is amended to read:

667.9. (a) Any person who commits one or more of the crimes listed in paragraphs (1) to (8), inclusive, of subdivision (c) against a person who is 65 years of age or older, or against a person who is blind, a paraplegic, or a quadriplegic, or against a person who is under the age of 14 years, and that disability or condition is known or reasonably should be known to the person committing the crime, shall receive a one-year enhancement for each violation in addition to the sentence provided under Section 667.

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

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

(1) Robbery, in violation of Section 211.

(2) Kidnapping, in violation of Section 207.

(3) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(4) Rape by force, violence, or fear of immediate and unlawful bodily injury on the victim or another person in violation of paragraph (2) of subdivision (a) of Section 261.

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

(6) Mayhem, as defined in Section 203.

(7) Carjacking, in violation of Section 215.

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

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

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

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

(2) Likely to continue indefinitely.

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

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

SEC. 12.5. Section 667.9 of the Penal Code is amended to read:

667.9. (a) Any person who commits one or more of the crimes listed in paragraphs (1) to (9), inclusive, of subdivision (c) against a person who is 65 years of age or older, or against a person who is blind, a paraplegic, or a quadriplegic, or against a person who is under the age of 14 years, and that disability or condition is known or reasonably should be known to the person committing the crime, shall receive a one-year enhancement for each violation in addition to the sentence provided under Section 667.

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

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

(1) Robbery, in violation of Section 211.

(2) Kidnapping, in violation of Section 207.

(3) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(4) Rape by force, violence, or fear of immediate and unlawful bodily injury on the victim or another person in violation of paragraph (2) of subdivision (a) of Section 261.

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

(6) Mayhem, as defined in Section 203.

(7) Carjacking, in violation of Section 215.

(8) Premises invasion of the first degree in violation of Section 465.

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

(d) The existence of any fact that would bring a person under subdivision (a) or (b) shall be alleged in the information or indictment and either admitted by the defendant in open court, or

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

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

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

(2) Likely to continue indefinitely.

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

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

SEC. 13. Section 786 of the Penal Code is amended to read:

786. When property taken in one jurisdictional territory by burglary, carjacking, robbery, theft, or embezzlement has been brought into another, or when property is received in one jurisdictional territory with the knowledge that it has been stolen or embezzled and the property was stolen or embezzled in another jurisdictional territory, the jurisdiction of the offense is in any competent court within either jurisdictional territory, or any contiguous jurisdictional territory if the arrest is made within the contiguous territory, the prosecution secures on the record the defendant's knowing, voluntary, and intelligent waiver of the right of vicinage, and the defendant is charged with one or more property crimes in the arresting territory.

SEC. 13.5. Section 786 of the Penal Code is amended to read:

786. When property taken in one jurisdictional territory by burglary, carjacking, premises invasion, robbery, theft, or embezzlement has been brought into another, or when property is received in one jurisdictional territory with the knowledge that it has been stolen or embezzled and the property was stolen or embezzled in another jurisdictional territory, the jurisdiction of the offense is in any competent court within either jurisdictional territory, or any contiguous jurisdictional territory if the arrest is made within the contiguous territory, the prosecution secures on the record the defendant's knowing, voluntary, and intelligent waiver of the right of vicinage, and the defendant is charged with one or more property crimes in the arresting territory.

SEC. 14. Section 868.5 of the Penal Code is amended to read:

868.5. (a) Notwithstanding any other law, a prosecuting witness in a case involving a violation of Section 187, 203, 205, 207, 211, 215, 220, 240, 242, 243.4, 245, 261, 262, 273a, 273d, 273.5, 273.6, 277, 285, 286, 288, 288a, 288.5, 289, 647.6, or former Section 647a, or a violation of subdivision (1) of Section 314, shall be entitled, for support, to the

attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. The person or persons so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person or persons are related to the prosecuting witness as a parent, guardian, or sibling and do not make notes during the hearing or proceeding.

(b) If the person or persons so chosen are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

SEC. 14.3. Section 868.5 of the Penal Code is amended to read:

868.5. (a) Notwithstanding any other law, a prosecuting witness in a case involving a violation of Section 187, 203, 205, 207, 211, 215, 220, 240, 242, 243.4, 245, 261, 262, 273a, 273d, 273.5, 273.55, 273.6, 277, 285, 286, 288, 288a, 288.5, 289, 647.6, or former Section 647a, or a violation of subdivision (1) of Section 314, shall be entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. The person or persons so chosen shall not be a person

described in Section 1070 of the Evidence Code unless the person or persons are related to the prosecuting witness as a parent, guardian, or sibling and do not make notes during the hearing or proceeding.

(b) If the person or persons so chosen are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

SEC. 14.5. Section 999e of the Penal Code is amended to read:

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

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

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

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

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

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

(c) In exercising the prosecutorial discretion granted by Section 999g, the district attorney shall consider the following: (1) the character, background, and prior criminal background of the defendant; and (2) the number and the seriousness of the offenses currently charged against the defendant.

SEC. 14.7. Section 999e of the Penal Code is amended to read:

999e. (a) An individual shall be the subject of career criminal prosecution efforts who is under arrest for the commission or attempted commission of one or more of the following felonies: robbery, carjacking, premises invasion, burglary, arson, any unlawful act relating to controlled substances in violation of Section 11351, 11351.5, or 11352 of the Health and Safety Code, receiving stolen property, grand theft and grand theft auto, and lewd or lascivious conduct upon a child; and who is either being prosecuted for three or more separate offenses not arising out of the same transaction involving one or more of these felonies, or has suffered at least one conviction during the preceding 10 years for any felony listed in paragraph (1) of this subdivision, or at least two convictions during the preceding 10 years for any felony listed in paragraph (2) of this subdivision:

(1) Robbery of the first degree, carjacking, premises invasion of the first degree, burglary of the first degree, arson as defined in Section 451, unlawfully causing a fire as defined in Section 452, forcible rape, sodomy or oral copulation committed with force, lewd or lascivious conduct committed upon a child, kidnapping as defined in Section 209, or murder.

(2) Grand theft, grand theft auto, receiving stolen property, robbery of the second degree, premises invasion of the second degree, burglary of the second degree, kidnapping as defined in Section 207, assault with a deadly weapon or instrument, or any unlawful act relating to controlled substances in violation of Section 11351 or 11352 of the Health and Safety Code.

For purposes of this chapter, the 10-year periods specified in this section shall be exclusive of any time that the arrested person has served in state prison.

(b) In applying the career criminal selection criteria set forth

above, a district attorney may elect to limit career criminal prosecution efforts to persons arrested for any one or more of the felonies listed in subdivision (a) of this section if crime statistics demonstrate that the incidence of one or more of these felonies presents a particularly serious problem in the county.

(c) In exercising the prosecutorial discretion granted by Section 999g, the district attorney shall consider the following:

(1) The character, background, and prior criminal background of the defendant.

(2) The number and the seriousness of the offenses currently charged against the defendant.

SEC. 15. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8), (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving both separate victims and separate occasions, the aggregate term shall be calculated as provided in

subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims and separate occasions.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from such custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape, carjacking, or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder,

or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 15.5. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2

of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8) , (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving both separate victims and separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims and separate occasions.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of

convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape, carjacking, or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.15, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in

which he or she is lawfully confined.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 15.7. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8) , (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a

consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving both separate victims and separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims and separate occasions.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from such custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as

described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape, carjacking, or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the

number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 15.9. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8) , (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving both separate victims and separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The

five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims and separate occasions.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape, carjacking, or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.15, 667.5,

667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in Sections 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 15.95. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to

Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8) , (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from such custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence

from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of such additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape, carjacking, or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to

Section 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether such enhancements are pursuant to this or some other section of law. Each of such enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 15.96. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section

667.5, including those offenses described in paragraph (8) , (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run

consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape, carjacking, or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.15, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence,

duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 15.97. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8) , (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any

enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape, carjacking, or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder,

or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 15.98. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies,

whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8) , (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape, carjacking, or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.15, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in Sections 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 16. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby

the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act on a child under the age of 14 years; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any other felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing great bodily injury or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) burglary of an inhabited dwelling house, or trailer coach as defined by the Vehicle Code, or inhabited portion of any other building; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) grand theft involving a firearm; (27) carjacking; (28) any attempt to commit a crime listed in this subdivision other than an assault.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings

and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 16.5. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act on a child under the age of 14 years; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any other felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony

in which the defendant personally uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing great bodily injury or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) burglary of an inhabited dwelling house, or trailer coach as defined by the Vehicle Code, or inhabited portion of any other building; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) grand theft involving a firearm; (27) carjacking; (28) any attempt to commit a crime listed in this subdivision other than an assault; and (29) any conspiracy to commit an offense described in paragraph (24) as it applies to Section 11370.4 of the Health and Safety Code where the defendant conspirator was substantially involved in the planning, direction, or financing of the underlying offense.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 17. Section 1202.5 of the Penal Code is amended to read:

1202.5. (a) In any case in which a defendant is convicted of any of the offenses enumerated in Section 211, 215, 459, 487, or 488, the court may order the defendant to pay a fine of ten dollars ($10) in addition to any other penalty or fine imposed. If the court determines that the defendant has the ability to pay all or part of the fine, the court may set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any other fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

(b) All fines collected pursuant to this section shall be transferred to the local law enforcement agency in the jurisdiction where the offense took place. All moneys collected shall be used exclusively to implement, support, and continue local crime prevention programs.

(c) As used in this section, "law enforcement agency" includes, but is not limited to, police departments, sheriffs departments, and probation departments.

SEC. 17.5. Section 1202.5 of the Penal Code is amended to read:

1202.5. (a) In any case in which a defendant is convicted of any of the offenses enumerated in Section 211, 215, 459, 465, 487, or 488, the court may order the defendant to pay a fine of ten dollars ($10) in addition to any other penalty or fine imposed. If the court determines that the defendant has the ability to pay all or part of the fine, the court may set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any other fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

(b) All fines collected pursuant to this section shall be transferred to the local law enforcement agency in the jurisdiction where the offense took place. All moneys collected shall be used exclusively to implement, support, and continue local crime prevention programs.

(c) As used in this section, "law enforcement agency" includes, but is not limited to, police , sheriffs , and probation departments.

SEC. 18. Section 1203 of the Penal Code, as amended by Section 14 of Chapter 59 of the Statutes of 1993, is amended to read:

1203. (a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of the probation officer. As used in this code, "conditional sentence" shall mean the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) Except as provided in subdivision (j), in every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in the report his or her recommendation of the amount the defendant should be required to pay as a restitution fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report a recommendation as to whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund. The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney, nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered

the report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) In every case in which a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If such a case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person which could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and was armed with a deadly weapon at either of those times.

(2) Any person who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a conspiracy to

commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

(B) The person used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machine gun under Section 12220, or a silencer under Section 12520.

(f) When probation is granted in a case which comes within the provisions of subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to Section 13967 of the Government Code in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in Section 13967 of the Government Code.

(h) In any case in which a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement in any case where the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4).

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court and as stated in the order, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

SEC. 18.3. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of the probation officer. As used in this code, "conditional sentence" shall mean the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) Except as provided in subdivision (j), in every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if

granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in the report his or her recommendation of the amount the defendant should be required to pay as a restitution fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report a recommendation as to whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund. The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney, nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered such report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) In every case in which a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If such a case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person which could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert such information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and was armed with a deadly weapon at either of those times.

(2) Any person who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

(B) The person used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in

the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machine gun under Section 12220, or a silencer under Section 12520.

(f) When probation is granted in a case which comes within the provisions of subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that a disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to Section 13967 of the Government Code in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in Section 13967 of the Government Code.

(h) In any case in which a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement in any case where the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4) and the probationer has reimbursed the county that has jurisdiction over his or her probation case the reasonable costs or processing his or her request for interstate compact supervision. The amount and method of reimbursement shall be in accordance with Section 1203.1b.

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county

financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court and as stated in the order, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

SEC. 18.5. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of the probation officer. As used in this code, "conditional sentence" shall mean the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) Except as provided in subdivision (j), in every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, that may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, that shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in the report his or her recommendation of the amount the defendant should be required to pay as a restitution fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report a recommendation as to whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund. The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney, nine days prior to the time fixed by the court for the hearing and determination of the

report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered the report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) In every case in which a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If that case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person that could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, premises invasion, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and was armed with a deadly weapon, other than a firearm at either of those times.

(2) Any person who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense that, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense that, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, premises invasion, rape with force or violence, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense that, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

(B) The person used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machine gun under Section 12220, or a silencer under Section 12520.

(f) When probation is granted in a case that comes within the provisions of subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts

relevant to determination of the amount of a restitution fine pursuant to Section 13967 of the Government Code in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in Section 13967 of the Government Code.

(h) In any case in which a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement in any case where the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4).

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court and as stated in the order, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

SEC. 18.7. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of the probation officer. As used in this code, "conditional sentence" shall mean the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) Except as provided in subdivision (j), in every case in which

a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, that may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, that shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in the report his or her recommendation of the amount the defendant should be required to pay as a restitution fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report a recommendation as to whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund. The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney, nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered the report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) In every case in which a person is convicted of a

misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person that could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, premises invasion, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and was armed with a deadly weapon, other than a firearm, at either of those times.

(2) Any person who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense that, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense that, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, premises invasion, rape with force or violence, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense that, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

(B) The person used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machine gun under Section 12220, or a silencer under Section 12520.

(f) When probation is granted in a case that comes within the provisions of subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to Section 13967 of the Government Code in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in Section 13967 of the Government Code.

(h) In any case in which a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement in any case where the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4)

and the probationer has reimbursed the county that has jurisdiction over his or her probation case the reasonable costs of processing his or her request for interstate compact supervision. The amount and method of reimbursement shall be in accordance with Section 1203.1b.

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court and as stated in the order, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

SEC. 19. Section 1203.055 of the Penal Code is amended to read:

1203.055. (a) Notwithstanding any other law, in sentencing a person convicted of committing or of attempting to commit one or more of the offenses listed in subdivision (b) against a person who is a passenger, operator, driver, or other occupant of any public transit vehicle whether the offense or attempt is committed within the vehicle or directed at the vehicle, the court shall require that the person serve some period of confinement. If probation is granted, it shall be a condition of probation that the person shall be confined in the county jail for some period of time. If the time spent in jail prior to arraignment is less than 24 hours, it shall not be considered to satisfy the requirement that some period of confinement be imposed.

As used in this subdivision, "public transit vehicle" means any motor vehicle, streetcar, trackless trolley, bus, shuttle, light rail system, rapid transit system, subway, train, taxi cab, or jitney, which transports members of the public for hire.

(b) Subdivision (a) applies to the following crimes:

(1) Murder.

(2) A violation of Section 241, 241.3, 241.4, 244, 245, 245.2, or 246.

(3) Robbery, in violation of Section 211.

(4) Kidnapping, in violation of Section 207.

(5) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(6) Battery, in violation of Section 243, 243.1, or 243.3.

(7) Rape, in violation of Section 261, 262, 264, or 264.1.

(8) Assault with intent to commit rape or sodomy, in violation of Section 220.

(9) Any other offense in which the defendant inflicts great bodily injury on any person other than an accomplice. As used in this

paragraph, "great bodily injury" means "great bodily injury" as defined in Section 12022.7.

(10) Grand theft, in violation of subdivision (1) of Section 487.

(11) Throwing of a hard substance or shooting a missile at the transit vehicle, in violation of Section 219.2.

(12) Unlawfully causing a fire, in violation of Section 452.

(13) Drawing, exhibiting, or using a firearm or deadly weapon, in violation of Section 417.

(14) A violation of Section 214.

(15) A violation of Section 215.

(c) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person convicted of a felony offense falling within this section if the person has been previously convicted and sentenced pursuant to this section.

(d) (1) The existence of any fact which would make a person ineligible for probation under subdivisions (a) and (c) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.

A finding bringing the defendant within this section shall not be stricken pursuant to Section 1385 or any provision of law.

(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(e) The court shall require, as a condition of probation for any person convicted of committing a crime which took place on a public transit vehicle, except in any case in which the court makes a finding and states on the record clear and compelling reasons why the condition would be inappropriate, that the person make restitution to the victim. If restitution is found to be inappropriate, the court shall require as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, that the defendant perform specified community service. Nothing in this subdivision shall be construed to limit the authority of a court to provide additional conditions of probation.

(f) In any case in which a person is convicted of committing a crime which took place on a public transit vehicle, the probation officer shall immediately investigate and report to the court at a specified time whether, as a result of the crime, property damage or loss or personal injury was caused by the defendant, the amount of the damage, loss, or injury, and the feasibility of requiring restitution to be made by the defendant. When a probation report is required pursuant to Section 1203 the information required by this subdivision shall be added to that probation report.

SEC. 20. Section 1203.06 of the Penal Code is amended to read:

1203.06. Notwithstanding Section 1203:

(a) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons:

(1) Any person who personally used a firearm during the commission or attempted commission of any of the following crimes:

(A) Murder.

(B) Robbery, in violation of Section 211.

(C) Kidnapping, in violation of Section 207.

(D) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(E) Burglary of the first degree, as defined in Section 460.

(F) Except as provided in Section 1203.065, rape in violation of subdivision (2) of Section 261.

(G) Assault with intent to commit rape or sodomy, in violation of Section 220.

(H) Escape, in violation of Section 4530 or 4532.

(I) A felony violation of Section 136.1 or 137.

(J) Carjacking, as described in Section 215.

(2) Any person previously convicted of a felony specified in subparagraphs (A) to (H), inclusive, or subparagraph (j), of paragraph (1), or assault with intent to commit murder under former Section 217, who is convicted of a subsequent felony and who was personally armed with a firearm at any time during its commission or attempted commission or was unlawfully armed with a firearm at the time of his or her arrest for the subsequent felony.

(b) (1) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(3) As used in subdivision (a) "used a firearm" means to display a firearm in a menacing manner, to intentionally fire it, or to intentionally strike or hit a human being with it.

(4) As used in subdivision (a) "armed with a firearm" means to knowingly carry a firearm as a means of offense or defense.

SEC. 21. Section 1203.075 of the Penal Code is amended to read:

1203.075. Notwithstanding Section 1203:

(a) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for, any person who, with the intent to inflict such injury, personally inflicts great bodily injury on the person of another in the commission or attempted commission of any of the following crimes:

(1) Murder.

(2) Robbery, in violation of Section 211.

(3) Kidnapping, in violation of Section 207.

(4) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(5) Burglary of the first degree, as defined in Section 460.

(6) Rape, in violation of subdivision (2) of Section 261.

(7) Assault with intent to commit rape or sodomy, in violation of Section 220.

(8) Escape, in violation of Section 4530 or 4532.

(9) A violation of subdivision (a) of Section 289.

(10) Sodomy, in violation of Section 286.

(11) Oral copulation, in violation of Section 288a.

(12) Carjacking, as described in Section 215.

(b) (1) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.

(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(3) As used in subdivision (a), "great bodily injury" means "great bodily injury" as defined in Section 12022.7.

SEC. 22. Section 1203.08 of the Penal Code is amended to read:

1203.08. (a) Notwithstanding any other law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any adult person convicted of a designated felony who has been previously convicted as an adult under charges separately brought and tried two or more times of any designated felony or in any other place of a public offense which, if committed in this state, would have been punishable as a designated felony, if all the convictions occurred within a 10-year period. The 10-year period shall be calculated exclusive of any period of time during which the person has been confined in a state or federal prison.

(b) (1) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(2) Except where the existence of the fact was not admitted or found to be true pursuant to paragraph (1), or the court finds that a prior conviction was invalid, the court shall not strike or dismiss any prior convictions alleged in the information or indictment.

(3) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and

Institutions Code.

(c) As used in this section, "designated felony" means any felony specified in Section 187, 192, 207, 209, 209.5, 211, 215, 217, 245, 288, or paragraph (2), (3), or (4) of subdivision (a) of Section 261, subdivision (a) of Section 460, or when great bodily injury occurs in perpetration of an assault to commit robbery, mayhem, or rape, as defined in Section 220.

SEC. 23. Section 1203.09 of the Penal Code is amended to read:

1203.09. (a) Notwithstanding any other law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who commits or attempts to commit one or more of the crimes listed in subdivision (b) against a person who is 60 years of age or older; or against a person who is blind, a paraplegic, a quadriplegic, or a person confined to a wheelchair and that disability is known or reasonably should be known to the person committing the crime; and who during the course of the offense inflicts great bodily injury upon the person.

(b) Subdivision (a) applies to the following crimes:

(i) Murder.

(ii) Robbery, in violation of Section 211.

(iii) Kidnapping, in violation of Section 207.

(iv) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(v) Burglary of the first degree, as defined in Section 460.

(vi) Rape by force or violence, in violation of subdivision (2) of Section 261.

(vii) Assault with intent to commit rape or sodomy, in violation of Section 220.

(viii) Carjacking, in violation of Section 215.

(c) The existence of any fact which would make a person ineligible for probation under either subdivision (a) or (f) shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(d) As used in this section "great bodily injury" means "great bodily injury" as defined in Section 12022.7.

(e) This section shall apply in all cases, including those cases where the infliction of great bodily injury is an element of the offense.

(f) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person convicted of having committed one or more of the following crimes against a person who is 60 years of age or older: assault with a deadly weapon or instrument, battery which results in physical injury which requires professional medical treatment, robbery, carjacking, or mayhem.

SEC. 24. Section 1601 of the Penal Code is amended to read:

1601. (a) In the case of any person charged with and found incompetent on a charge of, convicted of, or found not guilty by reason of insanity of murder, mayhem, aggravated mayhem, a violation of Section 207 or 209 in which the victim suffers intentionally inflicted great bodily injury, robbery or carjacking with a deadly or dangerous weapon or in which the victim suffers great bodily injury, a violation of subdivision (a) or (b) of Section 451, a violation of paragraph (2) or (3) of subdivision (a) of Section 261, a violation of Section 459 in the first degree, a violation of Section 220 in which the victim suffers great bodily injury, a violation of Section 288, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310, or any felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, outpatient status under this title shall not be available until that person has actually been confined in a state hospital or other facility for 180 days or more after having been committed under the provisions of law specified in Section 1600.

(b) In the case of any person charged with, and found incompetent on a charge of, or convicted of, any misdemeanor or any felony other than those described in subdivision (a), or found not guilty of any misdemeanor by reason of insanity, outpatient status under this title may be granted by the court prior to actual confinement in a state hospital or other treatment facility under the provisions of law specified in Section 1600.

SEC. 24.3. Section 1601 of the Penal Code is amended to read:

1601. (a) In the case of any person charged with and found incompetent on a charge of, convicted of, or found not guilty by reason of insanity of murder, mayhem, aggravated mayhem, a violation of Section 207 or 209 in which the victim suffers intentionally inflicted great bodily injury, robbery or carjacking with a deadly or dangerous weapon or in which the victim suffers great bodily injury, a violation of subdivision (a) or (b) of Section 451, a violation of paragraph (2) or (3) of subdivision (a) of Section 261, a violation of Section 459 of the first degree, a violation of Section 465 of the first degree, a violation of Section 220 in which the victim suffers great bodily injury, a violation of Section 288, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310, or any felony involving death, great bodily injury, or an act that poses a serious threat of bodily harm to another person, outpatient status under this title shall not be available until that person has actually been confined in a state hospital or other facility for 180 days or more after having been committed under the provisions of law specified in Section 1600.

(b) In the case of any person charged with, and found incompetent on a charge of, or convicted of, any misdemeanor or any felony other than those described in subdivision (a), or found not guilty of any misdemeanor by reason of insanity, outpatient status under this title may be granted by the court prior to actual

confinement in a state hospital or other treatment facility under the provisions of law specified in Section 1600.

SEC. 24.5. Section 3057 of the Penal Code is amended to read:

3057. (a) Confinement pursuant to a revocation of parole in the absence of a new conviction and commitment to prison under other provisions of law, shall not exceed 12 months, except as provided in subdivision (c).

(b) Upon completion of confinement pursuant to parole revocation without a new commitment to prison, the inmate shall be released on parole for a period which shall not extend beyond that portion of the maximum statutory period of parole specified by Section 3000 which was unexpired at the time of each revocation.

(c) Notwithstanding the limitations in subdivision (a) and in Section 3060.5 upon confinement pursuant to a parole revocation, the parole authority may extend the confinement pursuant to parole revocation for a maximum of an additional 12 months for subsequent acts of misconduct committed by the parolee while confined pursuant to that parole revocation. Upon a finding of good cause to believe that a parolee has committed a subsequent act of misconduct and utilizing procedures governing parole revocation proceedings, the parole authority may extend the period of confinement pursuant to parole revocation as follows: (1) not more than 180 days for an act punishable as a felony whether or not prosecution is undertaken, (2) not more than 90 days for an act punishable as a misdemeanor, whether or not prosecution is undertaken, and (3) not more than 30 days for an act defined as a serious disciplinary offense pursuant to subdivision (a) of Section 2932.

(d) (1) Except for parolees specified in paragraph (2), any revocation period imposed under subdivision (a) may be reduced in the same manner and to the same extent as a term of imprisonment may be reduced by worktime credits under Section 2933. Worktime credit must be earned and may be forfeited pursuant to the provisions of Section 2932.

Worktime credit forfeited shall not be restored.

(2) The following parolees shall not be eligible for credit under this subdivision:

(A) Parolees who are sentenced under Section 1168 with a maximum term of life imprisonment.

(B) Parolees who violated a condition of parole relating to association with specified persons, entering prohibited areas, attendance at parole outpatient clinic, or psychiatric attention.

(C) Parolees who were revoked for conduct described in, or that could be prosecuted under any of the following sections, whether or not prosecution is undertaken: Section 189, Section 191.5, subdivision (a) or paragraph (3) of subdivision (c) of Section 192, Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of Section 241, Section 244, paragraph (1) or (2) of subdivision (a) of Section 245, paragraph (2) of subdivision (a) of Section 261, Section 264.1, subdivision (c) or (d) of Section 286, Section 288, subdivision (c) or (d) of Section 288a,

Section 289, 347, or 404, subdivision (a) of Section 451, Section 12020, 12021, 12022, 12022.5, 12022.7, 12022.8, 12025, or 12560, or Section 664 for any attempt to engage in conduct described in or that could be prosecuted under any of the above-mentioned sections.

(D) Parolees who were revoked for any reason if they had been granted parole after conviction of any of the offenses specified in subparagraph (C).

(E) Parolees who the parole authority finds at a revocation hearing to be unsuitable for reduction of the period of confinement because of the circumstances and gravity of the parole violation, or because of prior criminal history.

SEC. 25. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (g) of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) Nothing in this section shall supersede any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision shall apply to, but not be limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Section 226.55 of the Civil Code.

(d) The department may adopt regulations to implement the provisions of this section as necessary.

(e) As used in this section, "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(f) As used in this section, "human resource agency" means a public or private entity, excluding any agency responsible for

licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(g) Records of the following offenses shall be furnished as provided in subdivision (a):

(1) Violations or attempted violations of Section 220, 261, 261.5, 262, 266, 266j, 267, 272, 273a, 273d, 273.5, Sections 285 to 289, inclusive, Section 311.4, 311.10, 311.11, 314, 647.6, former Section 647a, or subdivision (a) or (d) of Section 647, or commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a), for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(h) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 25.5. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, which has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great

bodily injury.

(25) Any attempt to commit a crime listed in this subdivision other than an assault.

(26) Any offense enumerated in Section 12001.6.

(27) Carjacking.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

SEC. 25.6. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been

charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any attempt to commit a crime listed in this subdivision other than an assault.

(26) Any offense enumerated in Section 12001.6.

(27) Premises invasion of the first degree.

(28) Carjacking.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 25.7. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, which has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great

bodily injury.

(25) Any felony violation of Section 186.22.

(26) Any attempt to commit a crime listed in this subdivision other than an assault.

(27) Any offense enumerated in Section 12001.6.

(28) Carjacking.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

SEC. 25.9. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily

injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any felony violation of Section 186.22.

(26) Any attempt to commit a crime listed in this subdivision other than an assault.

(27) Any offense enumerated in Section 12001.6.

(28) Carjacking.

(29) Premises invasion of the first degree.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes

the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 26. Section 12022 of the Penal Code is amended to read:

12022. (a) (1) Except as provided in subdivisions (c) and (d), any person who is armed with a firearm in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless such arming is an element of the offense of which he or she was convicted. This additional term shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with a firearm, whether or not such person is personally armed with a firearm.

(2) Except as provided in subdivision (c), and notwithstanding subdivision (d), if the firearm is an assault weapon, as defined in Section 12276, or a machinegun, as defined in Section 12200, the additional term described in this subdivision shall be three years whether or not the arming is an element of the offense of which he or she was convicted. The additional term provided in this paragraph shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with an assault weapon or machinegun whether or not the person is personally armed with an assault weapon or machinegun.

(b) Any person who personally uses a deadly or dangerous weapon in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless use of a deadly or dangerous weapon is an element of the offense of which he or she was convicted. However, if the person has been convicted of carjacking or attempted carjacking, the additional term shall be one, two, or three years.

When a person is found to have personally used a deadly or dangerous weapon in the commission or attempted commission of a felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who is personally armed with a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall

order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(d) Notwithstanding the enhancement set forth in subdivision (a), any person not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission or attempted commission of an offense specified in subdivision (c), shall, upon conviction of that offense, be punished by an additional term of one, two, or three years in the court's discretion. The court shall order the imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of sentencing.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 27. Section 12022.5 of the Penal Code is amended to read:

12022.5. (a) Except as provided in subdivisions (b) and (c), any person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years, unless use of a firearm is an element of the offense of which he or she was convicted. However, if the person has been convicted of carjacking or attempted carjacking, the additional term shall be four, five, or six years. The court shall order imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state its reasons for its enhancement choice on the record at the time of sentencing.

(b) (1) Notwithstanding subdivision (a), any person who is convicted of a felony or an attempt to commit a felony, including murder or attempted murder, in which that person discharged a firearm at an occupied motor vehicle which caused great bodily injury or death to the person of another, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for five years.

(2) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 12276, or a machinegun, as defined in Section 12200, in the commission or

attempted commission of a felony, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for five years.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who personally uses a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall order the imposition of middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record.

(d) The additional term provided by this section may be imposed in cases of assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or assault with a deadly weapon which is a firearm under Section 245.

(e) When a person is found to have personally used a firearm, an assault weapon, or a machinegun in the commission or attempted commission of a felony as provided in this section and the firearm, assault weapon, or machinegun is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

SEC. 27.5. Section 12022.5 of the Penal Code is amended to read:

12022.5. (a) Except as provided in subdivisions (b) and (c), any person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years, unless use of a firearm is an element of the offense of which he or she was convicted. However, if the person has been convicted of carjacking or attempted carjacking, the additional term shall be four, five, or six years. The court shall order imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state its reasons for its enhancement choice on the record at the time of sentencing.

(b) (1) Notwithstanding subdivision (a), any person who is convicted of a felony or an attempt to commit a felony, including murder or attempted murder, in which that person discharged a firearm at an occupied motor vehicle which caused great bodily

injury or death to the person of another, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for five years.

(2) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 12276, or a machinegun, as defined in Section 12200, in the commission or attempted commission of a felony, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for five years.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who personally uses a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall order the imposition of middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record.

(d) The additional term provided by this section may be imposed in cases of assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or assault with a deadly weapon which is a firearm under Section 245, or murder if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death.

(e) When a person is found to have personally used a firearm, an assault weapon, or a machinegun in the commission or attempted commission of a felony as provided in this section and the firearm, assault weapon, or machinegun is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

SEC. 28. Section 13853 of the Penal Code is amended to read:

13853. An individual may be the subject of career criminal apprehension efforts who is under investigation for the commission or attempted commission of one or more of the following felonies: homicide, rape or sexual assault, child molestation, robbery, carjacking, burglary, arson, any unlawful act relating to controlled substances in violation of Section 11351 or 11352 of the Health and Safety Code, receiving stolen property, grand theft and grand theft

auto; and who is determined to have committed three or more separate felony offenses not arising out of the same transaction, or has suffered at least one conviction during the preceding 10 years for the commission or attempted commission of any felony listed in subdivision (a), or at least two convictions during the preceding 10 years for the commission or attempted commission of any felony listed in subdivision (b):

(a) Robbery of the first degree, carjacking, burglary of the first degree, arson as defined in Section 451 or 452, forcible rape, sodomy or oral copulation committed with force, lewd or lascivious conduct committed upon a child, kidnapping as defined in Section 209, or murder.

(b) Grand theft, grand theft auto, receiving stolen property, robbery of the second degree, burglary of the second degree, kidnapping as defined in Section 207, assault with a deadly weapon or instrument, or any unlawful act relating to controlled substances in violation of Section 11351 or 11352 of the Health and Safety Code.

For purposes of this chapter, the 10-year periods specified in this section shall be exclusive of any time which the arrested person has served in state prison.

SEC. 28.5. Section 13853 of the Penal Code is amended to read:

13853. An individual may be the subject of career criminal apprehension efforts who is under investigation for the commission or attempted commission of one or more of the following felonies: homicide, rape or sexual assault, child molestation, robbery, carjacking, burglary, arson, premises invasion, any unlawful act relating to controlled substances in violation of Section 11351 or 11352 of the Health and Safety Code, receiving stolen property, grand theft and grand theft auto; and who is determined to have committed three or more separate felony offenses not arising out of the same transaction, or has suffered at least one conviction during the preceding 10 years for the commission or attempted commission of any felony listed in subdivision (a), or at least two convictions during the preceding 10 years for the commission or attempted commission of any felony listed in subdivision (b):

(a) Robbery of the first degree, premises invasion of the first degree, carjacking, burglary of the first degree, arson as defined in Section 451 or 452, forcible rape, sodomy or oral copulation committed with force, lewd or lascivious conduct committed upon a child, kidnapping as defined in Section 209, or murder.

(b) Grand theft, grand theft auto, receiving stolen property, robbery of the second degree, premises invasion of the second degree, burglary of the second degree, kidnapping as defined in Section 207, assault with a deadly weapon or instrument, or any unlawful act relating to controlled substances in violation of Section 11351 or 11352 of the Health and Safety Code.

For purposes of this chapter, the 10-year periods specified in this section shall be exclusive of any time that the arrested person has served in state prison.

SEC. 29. Section 676 of the Welfare and Institutions Code is amended to read:

676. (a) Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. Nothing in this section shall preclude the attendance of up to two family members of a prosecuting witness for the support of that witness, as authorized by Section 868.5 of the Penal Code. The judge or referee may nevertheless admit those persons he or she deems to have a direct and legitimate interest in the particular case or the work of the court. However, except as provided in subdivision (b), members of the public shall be admitted, on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging that a minor is a person described in Section 602 by reason of the violation of any one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(7) Any offense specified in Section 289 of the Penal Code.

(8) Kidnapping for ransom.

(9) Kidnapping for purpose of robbery.

(10) Kidnapping with bodily harm.

(11) Assault with intent to murder or attempted murder.

(12) Assault with a firearm or destructive device.

(13) Assault by any means of force likely to produce great bodily injury.

(14) Discharge of a firearm into an inhabited or occupied building.

(15) Any offense described in Section 1203.09 of the Penal Code.

(16) Any offense described in Section 12022.5 of the Penal Code.

(17) Any felony offense in which a minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(18) Burglary of an inhabited dwelling house or trailer coach, as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, if the minor previously has been adjudged a ward of the court by reason of the commission of any offense listed in this section, including an offense listed in this paragraph.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Any offense as specified in Sections 11351, 11351.5, 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and Safety Code.

(21) Criminal street gang activity which constitutes a felony pursuant to Section 186.22 of the Penal Code.

(22) Manslaughter as specified in Section 192 of the Penal Code.

(23) Drive-by shooting or discharge of a weapon from or at a motor vehicle as specified in Sections 246, 247, and 12034 of the Penal Code.

(24) Any crime committed with an assault weapon, as defined in Section 12276 of the Penal Code, including possession of an assault weapon as specified in subdivision (b) of Section 12280 of the Penal Code.

(25) Carjacking, while armed with a dangerous or deadly weapon.

(b) Where the petition filed alleges that the minor is a person described in Section 602 by reason of the commission of rape with force or violence or great bodily harm; sodomy by force, violence, duress, menace, or threat of great bodily harm; oral copulation by force, violence, duress, menace, or threat of great bodily harm; or any offense specified in Section 289 of the Penal Code, members of the public shall not be admitted to the hearing in either of the following instances:

(1) Upon a motion for a closed hearing by the district attorney, who shall make the motion if so requested by the victim.

(2) During the victim's testimony, if, at the time of the offense the victim was under 16 years of age.

(c) The name of a minor found to have committed one of the offenses listed in subdivision (a) shall not be confidential, unless the court, for good cause, so orders.

(d) Notwithstanding Sections 827 and 828 and subject to subdivisions (e) and (f), when a petition is sustained for any offense listed in subdivision (a), the charging petition, the minutes of the proceeding, and the orders of adjudication and disposition of the court that are contained in the court file shall be available for public inspection. Nothing in this subdivision shall be construed to authorize public access to any other documents in the court file.

(e) The probation officer or any party may petition the juvenile court to prohibit disclosure to the public of any file or record. The juvenile court shall prohibit the disclosure if it appears that the harm to the minor, victims, witnesses, or public from the public disclosure outweighs the benefit of public knowledge.

(f) Nothing in this section shall be applied to limit the disclosure of information as otherwise provided for by law.

SEC. 30. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the

petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at the hearing.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purpose of robbery.

(11) Kidnapping with bodily harm.

(12) Assault with intent to murder or attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) Any offense described in Section 1203.09 of the Penal Code.

(17) Any offense described in Section 12022.5 of the Penal Code.

(18) Any felony offense in which the minor personally used a

weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem as described in Section 205 of the Penal Code.

(25) Carjacking as described in Section 215 of the Penal Code while armed with a dangerous or deadly weapon.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offenses alleged to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the

above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

(d) If, subsequent to a finding that a minor is an unfit subject to be dealt with under the juvenile court law, the minor is convicted in a court of criminal jurisdiction of an offense listed in subdivision (b) of this section or listed in paragraph (24) of subdivision (c) of Section 1192.7 of the Penal Code, the finding of unfitness which preceded the conviction is applicable to the violation of any law or ordinance defining crime which is alleged to have been committed subsequent to the conviction if the violation would otherwise cause the minor to be a person described in Section 602. The probation officer shall not be required to investigate or submit a report regarding the fitness of a minor for any such subsequent charge. This subdivision shall not be construed to affect the right to appellate review of a finding of unfitness or the duration of the jurisdiction of the juvenile court as specified in Section 607.

SEC. 31. Section 4514 of the Welfare and Institutions Code is amended to read:

4514. All information and records obtained in the course of providing intake, assessment, and services under Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) to persons with developmental disabilities shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons, whether employed by a regional center or state developmental center, or not, in the provision of intake, assessment, and services or appropriate referrals. The consent of the person with a developmental disability, or his or her guardian or conservator, shall be obtained before information or records may be disclosed by regional center or state developmental center personnel to a professional not employed by the regional center or state developmental center, or a program not vendored by a regional center or state developmental center.

(b) When the person with a developmental disability, who has the capacity to give informed consent, designates individuals to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, marriage, family, and child counselor, nurse, attorney, or other professional to reveal information which has been given to him

or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(c) To the extent necessary for a claim, or for a claim or application to be made on behalf of a person with a developmental disability for aid, insurance, government benefit, or medical assistance to which he or she may be entitled.

(d) If the person with a developmental disability is a minor, ward, or conservatee, and his or her parent, guardian, conservator, or limited conservator with access to confidential records, designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, marriage, family, and child counselor, nurse, attorney, or other professional to reveal information which has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(e) For research, provided that the Director of Developmental Services designates by regulation rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. These rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

"

_____

Date

As a condition of doing research concerning persons with developmental disabilities who have received services from _____ (fill in the facility, agency or person), I, _____, agree to obtain the prior informed consent of persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, or the person's parent, guardian, or conservator, and I further agree not to divulge any information obtained in the course of the research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services so those persons who received services are identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

_____ "

Signed

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Senate Rules Committee or the Assembly Rules

Committee for the purposes of legislative investigation authorized by the committee.

(i) To the courts and designated parties as part of a regional center report or assessment in compliance with a statutory or regulatory requirement, including, but not limited to, Section 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the Penal Code, Section 6502 of the Welfare and Institutions Code, and Section 56557 of Title 17 of the California Code of Regulations.

(j) To the attorney for the person with a developmental disability in any and all proceedings upon presentation of a release of information signed by the person, except that when the person lacks the capacity to give informed consent, the regional center or state developmental center director or designee, upon satisfying himself or herself of the identity of the attorney, and of the fact that the attorney represents the person, shall release all information and records relating to the person except that nothing in this article shall be construed to compel a physician, psychologist, social worker, marriage, family, and child counselor, nurse, attorney, or other professional to reveal information which has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(k) Upon written consent by a person with a developmental disability previously or presently receiving services from a regional center or state developmental center, the director of the regional center or state developmental center, or his or her designee, may release any information, except information which has been given in confidence by members of the family of the person with developmental disabilities, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the regional center or state developmental center director or designee determines that the information is relevant to the evaluation. The consent shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(*l*) Between persons who are trained and qualified to serve on "multidisciplinary personnel" teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) When a person with a developmental disability dies from any cause, natural or otherwise, while hospitalized in a state developmental center, the State Department of Developmental

Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall release information and records to the coroner. The State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall not release any notes, summaries, transcripts, tapes, or records of conversations between the resident and health professional personnel of the hospital relating to the personal life of the resident which is not related to the diagnosis and treatment of the resident's physical condition. Any information released to the coroner pursuant to this section shall remain confidential and shall be sealed and shall not be made part of the public record.

(n) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Health Services, and who are licensed or registered health professionals, and to authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate health facilities and community care facilities, and to ensure that the standards of care and services provided in such facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Health Services or the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names which are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Health Services or the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Health Services or the State Department of Social Services shall not contain the name of the person with a developmental disability.

(o) To any board which licenses and certifies professionals in the fields of mental health and developmental disabilities pursuant to state law, when the Director of Developmental Services has

reasonable cause to believe that there has occurred a violation of any provision of law subject to the jurisdiction of a board and the records are relevant to the violation. The information shall be sealed after a decision is reached in the matter of the suspected violation, and shall not subsequently be released except in accordance with this subdivision. Confidential information in the possession of the board shall not contain the name of the person with a developmental disability.

(p) To governmental law enforcement agencies by the director of a regional center or state developmental center, or his or her designee, when (1) the person with a developmental disability has been reported lost or missing; or (2) there is probable cause to believe that a person with a developmental disability has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, robbery, carjacking, assault with the intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, assault or battery, or unlawful possession of a weapon, as provided in Section 12020 of the Penal Code.

This subdivision shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her treatment unless relevant to the crime involved.

This subdivision shall not be construed as an exception to, or in any other way affecting, the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, or Chapter 11 (commencing with Section 15600) and Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(q) To the Youth Authority and Adult Correctional Agency or any component thereof, as necessary to the administration of justice.

(r) To an agency mandated to investigate a report of abuse filed pursuant to either Section 11164 of the Penal Code or Section 15630 of the Welfare and Institutions Code for the purposes of either a mandated or voluntary report or when those agencies request information in the course of conducting their investigation.

(s) When a person with developmental disabilities, or the parent, guardian, or conservator of a person with developmental disabilities who lacks capacity to consent, fails to grant or deny a request by a regional center or state developmental center to release information or records relating to the person with developmental disabilities within a reasonable period of time, the director of the regional or developmental center, or his or her designee, may release information or records on behalf of that person provided both of the following conditions are met:

(1) Release of the information or records is deemed necessary to protect the person's health, safety, or welfare.

(2) The person, or the person's parent, guardian, or conservator, has been advised annually in writing of the policy of the regional center or state developmental center for release of confidential

client information or records when the person with developmental disabilities, or the person's parent, guardian, or conservator, fails to respond to a request for release of the information or records within a reasonable period of time. A statement of policy contained in the client's individual program plan shall be deemed to comply with the notice requirement of this paragraph.

SEC. 31.5. Section 4514 of the Welfare and Institutions Code is amended to read:

4514. All information and records obtained in the course of providing intake, assessment, and services under Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) to persons with developmental disabilities shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons, whether employed by a regional center or state developmental center, or not, in the provision of intake, assessment, and services or appropriate referrals. The consent of the person with a developmental disability, or his or her guardian or conservator, shall be obtained before information or records may be disclosed by regional center or state developmental center personnel to a professional not employed by the regional center or state developmental center, or a program not vendored by a regional center or state developmental center.

(b) When the person with a developmental disability, who has the capacity to give informed consent, designates individuals to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, or marriage, family, and child counselor, or nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(c) To the extent necessary for a claim, or for a claim or application to be made on behalf of a person with a developmental disability for aid, insurance, government benefit, or medical assistance to which he or she may be entitled.

(d) If the person with a developmental disability is a minor, ward, or conservatee, and his or her parent, guardian, conservator, or limited conservator with access to confidential records, designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, or marriage, family, and child counselor, or nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed

by that family member.

(e) For research, provided that the Director of Developmental Services designates by regulation rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. These rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

"

_____
Date

As a condition of doing research concerning persons with developmental disabilities who have received services from _____ (fill in the facility, agency or person), I, _____, agree to obtain the prior informed consent of persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, or the person's parent, guardian, or conservator, and I further agree not to divulge any information obtained in the course of the research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services so those persons who received services are identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

_____ "
Signed

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Senate Rules Committee or the Assembly Rules Committee for the purposes of legislative investigation authorized by the committee.

(i) To the courts and designated parties as part of a regional center report or assessment in compliance with a statutory or regulatory requirement, including, but not limited to, Section 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the Penal Code, Section 6502 of the Welfare and Institutions Code, and Section 56557 of Title 17 of the California Code of Regulations.

(j) To the attorney for the person with a developmental disability in any and all proceedings upon presentation of a release of information signed by the person, except that when the person lacks the capacity to give informed consent, the regional center or state developmental center director or designee, upon satisfying himself or herself of the identity of the attorney, and of the fact that the attorney represents the person, shall release all information and

records relating to the person except that nothing in this article shall be construed to compel a physician, psychologist, social worker, marriage, family, and child counselor, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(k) Upon written consent by a person with a developmental disability previously or presently receiving services from a regional center or state developmental center, the director of the regional center or state developmental center, or his or her designee, may release any information, except information that has been given in confidence by members of the family of the person with developmental disabilities, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the regional center or state developmental center director or designee determines that the information is relevant to the evaluation. The consent shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(*l*) Between persons who are trained and qualified to serve on "multidisciplinary personnel" teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) When a person with a developmental disability dies from any cause, natural or otherwise, while hospitalized in a state developmental center, the State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall release information and records to the coroner. The State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall not release any notes, summaries, transcripts, tapes, or records of conversations between the resident and health professional personnel of the hospital relating to the personal life of the resident that is not related to the diagnosis and treatment of the resident's physical condition. Any information released to the coroner pursuant to this section shall remain confidential and shall be sealed and shall not be made part of the public record.

(n) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Health Services, and who are licensed or registered health

professionals, and to authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate health facilities and community care facilities, and to ensure that the standards of care and services provided in the facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Health Services or the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Health Services or the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Health Services or the State Department of Social Services shall not contain the name of the person with a developmental disability.

(o) To any board that licenses and certifies professionals in the fields of mental health and developmental disabilities pursuant to state law, when the Director of Developmental Services has reasonable cause to believe that there has occurred a violation of any provision of law subject to the jurisdiction of a board and the records are relevant to the violation. The information shall be sealed after a decision is reached in the matter of the suspected violation, and shall not subsequently be released except in accordance with this subdivision. Confidential information in the possession of the board shall not contain the name of the person with a developmental disability.

(p) To governmental law enforcement agencies by the director of a regional center or state developmental center, or his or her designee, when either of the following circumstances exist:

(1) The person with a developmental disability has been reported lost or missing.

(2) There is probable cause to believe that a person with a developmental disability has committed, or has been the victim of,

murder, manslaughter, mayhem, aggravated mayhem, kidnapping, premises invasion, robbery, carjacking, assault with the intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, assault or battery, or unlawful possession of a weapon, as provided in Section 12020 of the Penal Code.

This subdivision shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her treatment unless relevant to the crime involved.

This subdivision shall not be construed as an exception to, or in any other way affecting, the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, or Chapter 11 (commencing with Section 15600) and Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(q) To the Youth Authority and Adult Correctional Agency or any component thereof, as necessary to the administration of justice.

(r) To an agency mandated to investigate a report of abuse filed pursuant to either Section 11164 of the Penal Code or Section 15630 of the Welfare and Institutions Code for the purposes of either a mandated or voluntary report or when those agencies request information in the course of conducting their investigation.

(s) When a person with developmental disabilities, or the parent, guardian, or conservator of a person with developmental disabilities who lacks capacity to consent, fails to grant or deny a request by a regional center or state developmental center to release information or records relating to the person with developmental disabilities within a reasonable period of time, the director of the regional or developmental center, or his or her designee, may release information or records on behalf of that person provided both of the following conditions are met:

(1) Release of the information or records is deemed necessary to protect the person's health, safety, or welfare.

(2) The person, or the person's parent, guardian, or conservator, has been advised annually in writing of the policy of the regional center or state developmental center for release of confidential client information or records when the person with developmental disabilities, or the person's parent, guardian, or conservator, fails to respond to a request for release of the information or records within a reasonable period of time. A statement of policy contained in the client's individual program plan shall be deemed to comply with the notice requirement of this paragraph.

SEC. 32. Section 5328.4 of the Welfare and Institutions Code is amended to read:

5328.4. The physician in charge of the patient, or the professional person in charge of the facility or his or her designee, when he or she has probable cause to believe that a patient while hospitalized has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, carjacking, robbery,

assault with intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, unlawful possession of a weapon as provided in Section 12020 of the Penal Code, or escape from a hospital by a mentally disordered sex offender as provided in Section 6330 of the Welfare and Institutions Code, shall release information about the patient to governmental law enforcement agencies.

The physician in charge of the patient, or the professional person in charge of the facility or his or her designee, when he or she has probable cause to believe that a patient, while hospitalized has committed, or has been the victim of assault or battery may release information about the patient to governmental law enforcement agencies.

This section shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her voluntary or involuntary admission, commitment, or treatment.

This section shall not be construed as an exception to or in any other way affecting the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code.

SEC. 32.5. Section 5328.4 of the Welfare and Institutions Code is amended to read:

5328.4. The physician in charge of the patient, or the professional person in charge of the facility or his or her designee, when he or she has probable cause to believe that a patient while hospitalized has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, premises invasion, carjacking, robbery, assault with intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, unlawful possession of a weapon as provided in Section 12020 of the Penal Code, or escape from a hospital by a mentally disordered sex offender as provided in Section 6330 of the Welfare and Institutions Code, shall release information about the patient to governmental law enforcement agencies.

The physician in charge of the patient, or the professional person in charge of the facility or his or her designee, when he or she has probable cause to believe that a patient, while hospitalized has committed, or has been the victim of assault or battery may release information about the patient to governmental law enforcement agencies.

This section shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her voluntary or involuntary admission, commitment, or treatment.

This section shall not be construed as an exception to or in any other way affecting the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code.

SEC. 33. Section 6500 of the Welfare and Institutions Code is

amended to read:

6500. On and after July 1, 1971, no mentally retarded person may be committed to the State Department of Developmental Services pursuant to this article, unless he or she is a danger to himself or herself or others. For the purposes of this article, dangerousness to self or others shall be considered to include, but not be limited to, a finding of incompetence to stand trial pursuant to the provisions of Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code when the defendant has been charged with murder, mayhem, aggravated mayhem, a violation of Section 207 or 209 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, robbery perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, carjacking perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, a violation of subdivision (b) of Section 451 of the Penal Code, a violation of paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.3, 12308, 12309, or 12310 of the Penal Code, or if the defendant has been charged with a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person.

Any order of commitment made pursuant to this article shall expire automatically one year after the order of commitment is made. This section shall not be construed to prohibit any party enumerated in Section 6502 from filing subsequent petitions for additional periods of commitment. In the event such subsequent petitions are filed, the procedures followed shall be the same as with an initial petition for commitment.

In any proceedings conducted under the authority of this article the alleged mentally retarded person shall be informed of his or her right to counsel by the court; and if the person does not have an attorney for the proceedings the court shall immediately appoint the public defender or other attorney to represent him or her. The person shall pay the cost for such legal service if he or she is able to do so. At any judicial proceeding under the provisions of this article, allegations that a person is mentally retarded and a danger to himself or herself or to others shall be presented by the district attorney for the county unless the board of supervisors, by ordinance or resolution, delegates such authority to the county counsel.

SEC. 33.5. Section 6500 of the Welfare and Institutions Code is amended to read:

6500. On and after July 1, 1971, no mentally retarded person may be committed to the State Department of Developmental Services pursuant to this article, unless he or she is a danger to himself or herself or others. For the purposes of this article, dangerousness to

self or others shall be considered to include, but not be limited to, a finding of incompetence to stand trial pursuant to the provisions of Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code when the defendant has been charged with murder, mayhem, aggravated mayhem, a violation of Section 207 or 209 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, robbery perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, premises invasion or carjacking perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, a violation of subdivision (b) of Section 451 of the Penal Code, a violation of paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.3, 12308, 12309, or 12310 of the Penal Code, or if the defendant has been charged with a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person.

Any order of commitment made pursuant to this article shall expire automatically one year after the order of commitment is made. This section shall not be construed to prohibit any party enumerated in Section 6502 from filing subsequent petitions for additional periods of commitment. In the event the subsequent petitions are filed, the procedures followed shall be the same as with an initial petition for commitment.

In any proceedings conducted under the authority of this article the alleged mentally retarded person shall be informed of his or her right to counsel by the court; and if the person does not have an attorney for the proceedings the court shall immediately appoint the public defender or other attorney to represent him or her. The person shall pay the cost for the legal service if he or she is able to do so. At any judicial proceeding under the provisions of this article, allegations that a person is mentally retarded and a danger to himself or herself or to others shall be presented by the district attorney for the county unless the board of supervisors, by ordinance or resolution, delegates this authority to the county counsel.

SEC. 34. Section 8103 of the Welfare and Institutions Code is amended to read:

8103. (a) (1) No person who after October 1, 1955, has been adjudicated by a court of any state to be a danger to others as a result of mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control any firearm or any other deadly weapon unless there has been issued to the person a certificate by the court of adjudication upon release from treatment or at a later date stating that the person may possess a firearm or any other deadly weapon

without endangering others, and the person has not, subsequent to the issuance of the certificate, again been adjudicated by a court to be a danger to others as a result of a mental disorder or mental illness.

(2) The court shall immediately notify the Department of Justice of the court order finding the individual to be a person described in paragraph (1). The court shall also notify the Department of Justice of any certificate issued as described in paragraph (1).

(b) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of murder, mayhem, a violation of Section 207 or 209 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, carjacking or robbery in which the victim suffers great bodily injury, a violation of Section 451 or 452 of the Penal Code involving a trailer coach, as defined in Section 635 of the Vehicle Code, or any dwelling house, a violation of paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code, or of a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, or a violation of the law of any other state or the United States that includes all the elements of any of the above felonies as defined under California law, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control any firearm or any other deadly weapon.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1).

(c) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of any crime other than those described in subdivision (b) shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon unless the court of commitment has found the person to have recovered sanity, pursuant to Section 1026.2 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her sanity.

(d) (1) No person found by a court to be mentally incompetent to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state or the United States, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon, unless there has been a finding with respect to the person

of restoration to competence to stand trial by the committing court, pursuant to Section 1372 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be mentally incompetent as described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her competence.

(e) (1) No person who has been placed under conservatorship by a court, pursuant to Section 5350 or the law of any other state or the United States, because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon while under the conservatorship if, at the time the conservatorship was ordered or thereafter, the court which imposed the conservatorship found that possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others. Upon placing any person under conservatorship, and prohibiting firearm or any other deadly weapon possession by the person the court shall notify the person of this prohibition.

(2) The court shall immediately notify the Department of Justice of the court order placing the person under conservatorship and prohibiting firearm or any other deadly weapon possession by the person as described in paragraph (1). The notice shall include the date the conservatorship was imposed and the date the conservatorship is to be terminated. If the conservatorship is subsequently terminated before the date listed in the notice to the Department of Justice or the court subsequently finds that possession of a firearm or any other deadly weapon by the person would no longer present a danger to the safety of the person or others, the court shall immediately notify the Department of Justice.

(3) All information provided to the Department of Justice pursuant to paragraph (2) shall be kept confidential, separate, and apart from all other records maintained by the department, and shall be used only to determine eligibility to purchase or possess firearms or other deadly weapons. Any person who knowingly furnishes that information for any other purpose is guilty of a misdemeanor. All the information concerning any person shall be destroyed upon receipt by the Department of Justice of notice of the termination of conservatorship as to that person pursuant to paragraph (2).

(f) (1) No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for

a period of five years after the person is released from the facility. A person described in the preceding sentence, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if the superior court has, pursuant to paragraph (4), upon petition of the person, found, by a preponderance of the evidence, that the person is likely to use firearms in a safe and lawful manner.

(2) For each person subject to this subdivision, the facility shall immediately, on the date of admission, submit a report to the Department of Justice, on a form prescribed by the department, containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility.

Any report prescribed by this subdivision shall be confidential, except for purposes of the court proceedings described in this subdivision and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm.

(3) Prior to, or concurrent with, the discharge, the facility shall inform a person subject to this subdivision that he or she is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years. Simultaneously, the facility shall inform the person that he or she may petition a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm.

(4) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The People of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the petition to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney was notified of the hearing date by the clerk of the court. The district attorney may notify the county mental health director of the petition who shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing

that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this section. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state summary criminal history information.

(5) Nothing in this subdivision shall prohibit the use of reports filed pursuant to this section to determine the eligibility of persons to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm.

(g) (1) No person who has been certified for intensive treatment under Section 5250, 5260, or 5270.15 shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years.

Any person who meets the criteria contained in subdivision (e) or (f) who is released from intensive treatment shall nevertheless, if applicable, remain subject to the prohibition contained in subdivision (e) or (f).

(2) For each person certified for intensive treatment under paragraph (1), the facility shall immediately submit a report to the Department of Justice, on a form prescribed by the department, containing information regarding the person, including, but not limited to, the legal identity of the person and the legal grounds upon which the person was certified. Any report submitted pursuant to this paragraph shall only be used for the purposes specified in paragraph (2) of subdivision (f).

(3) Prior to, or concurrent with, the discharge of each person certified for intensive treatment under paragraph (1), the facility shall inform the person of that information specified in paragraph (3) of subdivision (f).

(4) Any person who is subject to the prohibition contained in paragraph (1) may fully invoke paragraph (4) of subdivision (f).

(h) For all persons identified in subdivisions (f) and (g), facilities shall report to the Department of Justice as specified in those subdivisions, except facilities shall not report persons under subdivision (g) if the same persons previously have been reported under subdivision (f).

Additionally, all facilities shall report to the Department of Justice upon the discharge of persons from whom reports have been

submitted pursuant to subdivision (f) or (g). However, a report shall not be filed for persons who are discharged within 31 days after the date of admission.

(i) Every person who owns or possesses or has under his or her custody or control, or purchases or receives, or attempts to purchase or receive, any firearm or any other deadly weapon in violation of this section is guilty of a felony which is punishable by imprisonment in the state prison, or in the county jail for not more than one year, and which is subject to subdivision (b) of Section 17 of the Penal Code.

(j) "Deadly weapon," as used in this section, has the meaning prescribed by Section 8100.

SEC. 34.5. Section 8103 of the Welfare and Institutions Code is amended to read:

8103. (a) (1) No person who after October 1, 1955, has been adjudicated by a court of any state to be a danger to others as a result of mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control any firearm or any other deadly weapon unless there has been issued to the person a certificate by the court of adjudication upon release from treatment or at a later date stating that the person may possess a firearm or any other deadly weapon without endangering others, and the person has not, subsequent to the issuance of the certificate, again been adjudicated by a court to be a danger to others as a result of a mental disorder or mental illness.

(2) The court shall immediately notify the Department of Justice of the court order finding the individual to be a person described in paragraph (1). The court shall also notify the Department of Justice of any certificate issued as described in paragraph (1).

(b) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of murder, mayhem, a violation of Section 207 or 209 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, premises invasion of the first degree, carjacking or robbery in which the victim suffers great bodily injury, a violation of Section 451 or 452 of the Penal Code involving a trailer coach, as defined in Section 635 of the Vehicle Code, or any dwelling house, a violation of paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code, or of a felony involving death, great bodily injury, or an act that poses a serious threat of bodily harm to another person, or a violation of the law of any other state or the United States that includes all the elements of any of the above felonies as defined under California law, shall purchase or receive, or attempt to purchase or receive, or have

in his or her possession or under his or her custody or control any firearm or any other deadly weapon.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1).

(c) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of any crime other than those described in subdivision (b) shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon unless the court of commitment has found the person to have recovered sanity, pursuant to Section 1026.2 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her sanity.

(d) (1) No person found by a court to be mentally incompetent to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state or the United States, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon, unless there has been a finding with respect to the person of restoration to competence to stand trial by the committing court, pursuant to Section 1372 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be mentally incompetent as described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her competence.

(e) (1) No person who has been placed under conservatorship by a court, pursuant to Section 5350 or the law of any other state or the United States, because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon while under the conservatorship if, at the time the conservatorship was ordered or thereafter, the court that imposed the conservatorship found that possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others. Upon placing any person under conservatorship, and prohibiting firearm or any other deadly weapon possession by the person the court shall notify the person of this prohibition.

(2) The court shall immediately notify the Department of Justice of the court order placing the person under conservatorship and prohibiting firearm or any other deadly weapon possession by the

person as described in paragraph (1). The notice shall include the date the conservatorship was imposed and the date the conservatorship is to be terminated. If the conservatorship is subsequently terminated before the date listed in the notice to the Department of Justice or the court subsequently finds that possession of a firearm or any other deadly weapon by the person would no longer present a danger to the safety of the person or others, the court shall immediately notify the Department of Justice.

(3) All information provided to the Department of Justice pursuant to paragraph (2) shall be kept confidential, separate, and apart from all other records maintained by the department, and shall be used only to determine eligibility to purchase or possess firearms or other deadly weapons. Any person who knowingly furnishes that information for any other purpose is guilty of a misdemeanor. All the information concerning any person shall be destroyed upon receipt by the Department of Justice of notice of the termination of conservatorship as to that person pursuant to paragraph (2).

(f) (1) No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. A person described in the preceding sentence, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if the superior court has, pursuant to paragraph (4), upon petition of the person, found, by a preponderance of the evidence, that the person is likely to use firearms in a safe and lawful manner.

(2) For each person subject to this subdivision, the facility shall immediately, on the date of admission, submit a report to the Department of Justice, on a form prescribed by the department, containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility.

Any report prescribed by this subdivision shall be confidential, except for purposes of the court proceedings described in this subdivision and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm.

(3) Prior to, or concurrent with, the discharge, the facility shall inform a person subject to this subdivision that he or she is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years. Simultaneously, the facility shall inform the person that he or she may petition a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm.

(4) Any person who is subject to paragraph (1) may petition the

superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The people of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the petition to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney was notified of the hearing date by the clerk of the court. The district attorney may notify the county mental health director of the petition who shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this section. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state summary criminal history information.

(5) Nothing in this subdivision shall prohibit the use of reports filed pursuant to this section to determine the eligibility of persons to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm.

(g) (1) No person who has been certified for intensive treatment under Section 5250, 5260, or 5270.15 shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years.

Any person who meets the criteria contained in subdivision (e) or

(f) who is released from intensive treatment shall nevertheless, if applicable, remain subject to the prohibition contained in subdivision (e) or (f).

(2) For each person certified for intensive treatment under paragraph (1), the facility shall immediately submit a report to the Department of Justice, on a form prescribed by the department, containing information regarding the person, including, but not limited to, the legal identity of the person and the legal grounds upon which the person was certified. Any report submitted pursuant to this paragraph shall only be used for the purposes specified in paragraph (2) of subdivision (f).

(3) Prior to, or concurrent with, the discharge of each person certified for intensive treatment under paragraph (1), the facility shall inform the person of that information specified in paragraph (3) of subdivision (f).

(4) Any person who is subject to the prohibition contained in paragraph (1) may fully invoke paragraph (4) of subdivision (f).

(h) For all persons identified in subdivisions (f) and (g), facilities shall report to the Department of Justice as specified in those subdivisions, except facilities shall not report persons under subdivision (g) if the same persons previously have been reported under subdivision (f).

Additionally, all facilities shall report to the Department of Justice upon the discharge of persons from whom reports have been submitted pursuant to subdivision (f) or (g). However, a report shall not be filed for persons who are discharged within 31 days after the date of admission.

(i) Every person who owns or possesses or has under his or her custody or control, or purchases or receives, or attempts to purchase or receive, any firearm or any other deadly weapon in violation of this section is guilty of a felony that is punishable by imprisonment in the state prison, or in a county jail for not more than one year, and that is subject to subdivision (b) of Section 17 of the Penal Code.

(j) "Deadly weapon," as used in this section, has the meaning prescribed by Section 8100.

SEC. 35. (a) Section 1.2 of this bill incorporates amendments to Section 6254 of the Government Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 6254 of the Government Code, (3) AB 166 and SB 798 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1957, in which case Section 6254 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 1.2 of this bill shall become operative.

(b) Section 1.3 of this bill incorporates amendments to Section 6254 of the Government Code proposed by both this bill and AB 166. It shall only become operative if (1) both bills are enacted and

become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 6254 of the Government Code, (3) AB 1957 and SB 798 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 166, in which case Section 6254 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 166, at which time Section 1.3 of this bill shall become operative.

(c) Section 1.4 of this bill incorporates amendments to Section 6254 of the Government Code proposed by both this bill and SB 798. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 6254 of the Government Code, (3) AB 1957 and AB 166 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 798, in which case Section 6254 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of SB 798, at which time Section 1.4 of this bill shall become operative.

(d) Section 1.5 of this bill incorporates amendments to Section 6254 of the Government Code proposed by this bill, AB 1957, and SB 798. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 6254 of the Government Code, (3) AB 166 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1957 and SB 798, in which case Section 6254 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 1957 and SB 798, at which time Section 1.5 of this bill shall become operative.

(e) Section 1.6 of this bill incorporates amendments to Section 6254 of the Government Code proposed by this bill, AB 1957, and AB 166. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 6254 of the Government Code, (3) SB 798 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1957 and AB 166, in which case Section 6254 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 1957 and AB 166, at which time Section 1.6 of this bill shall become operative.

(f) Section 1.7 of this bill incorporates amendments to Section 6254 of the Government Code proposed by this bill, AB 166, and SB 798. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 6254 of the Government Code, (3) AB 1957 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 166 and SB 798, in which case Section 6254 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 166 and SB 798, at which time Section 1.7 of this bill shall become

operative.

(g) Section 1.8 of this bill incorporates amendments to Section 6254 of the Government Code proposed by this bill, AB 1957, AB 166, and SB 798. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) all four bills amend Section 6254 of the Government Code, and (3) this bill is enacted after AB 1957, AB 166, and SB 798, in which case Section 6254 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 1957, AB 166, and SB 798, at which time Section 1.8 of this bill shall become operative.

SEC. 36. (a) Section 3.02 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by both this bill and AB 1630. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1957, AB 170, and SB 724 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1630, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1630, at which time Section 3.02 of this bill shall become operative.

(b) Section 3.06 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1630, AB 170, and SB 724 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1957, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 3.06 of this bill shall become operative.

(c) Section 3.08 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by both this bill and AB 170. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1957, AB 1630, and SB 724 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 170, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 170, at which time Section 3.08 of this bill shall become operative.

(d) Section 3.09 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by both this bill and SB 724. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1630, AB 1957, and AB 170 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 724, in which

case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of SB 724, at which time Section 3.09 of this bill shall become operative.

(e) Section 3.1 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1957, and SB 724. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1630 and AB 170 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1957 and SB 724, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1957 and SB 724, at which time Section 3.1 of this bill shall become operative.

(f) Section 3.2 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1957, and AB 1630. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 170 and SB 724 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1957 and AB 1630, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1957 and AB 1630, at which time Section 3.2 of this bill shall become operative.

(g) Section 3.3 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1630, and AB 170. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1957 and SB 724 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1630 and AB 170, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1630 and AB 170, at which time Section 3.3 of this bill shall become operative.

(h) Section 3.4 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1957, and AB 170. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1630 and SB 724 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1957 and AB 170, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1957 and AB 170, at which time Section 3.4 of this bill shall become operative.

(i) Section 3.5 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1630, and SB 724.

It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1957 and AB 170 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1630 and SB 724, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1630 and SB 724, at which time Section 3.5 of this bill shall become operative.

(j) Section 3.6 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 170, and SB 724. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1957 and AB 1630 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 170 and SB 724, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 170 and SB 724, at which time Section 3.6 of this bill shall become operative.

(k) Section 3.7 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1630, AB 1957, and SB 724. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 170 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1630, AB 1957, and SB 724, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1630, AB 1957, and SB 724, at which time Section 3.7 of this bill shall become operative.

(*l*) Section 3.8 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1630, AB 170, and SB 724. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1957 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1630, AB 170, and SB 724, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1630, AB 170, and SB 724, at which time Section 3.8 of this bill shall become operative.

(m) Section 3.9 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1630, AB 170, and AB 1957. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 186.22 of the Penal Code, (3) SB 724 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1630, AB 170, and AB 1957, in

which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1630, AB 170, and AB 1957, at which time Section 3.9 of this bill shall become operative.

(n) Section 3.10 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1630, AB 1957, AB 170, and SB 724. It shall only become operative if (1) all five bills are enacted and becomes effective on or before January 1, 1994, but this bill becomes operative first, (2) all five bills amend Section 186.22 of the Penal Code, and (3) this bill is enacted after AB 1630, AB 1957, AB 170, and SB 724, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1630, AB 1957, AB 170, and SB 724, at which time Section 3.10 of this bill shall become operative.

SEC. 37. Section 4.5 of this bill incorporates amendments to Section 189 of the Penal Code proposed by this bill, SB 310, and AB 852. It shall only become operative if (1) this bill and SB 310, or this bill and AB 852, or all three bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 189 of the Penal Code, and (3) this bill is enacted after SB 310 or AB 852, or both if both of those bills are enacted, in which case Section 189 of the Penal Code, as amended by Section 4 of this bill, shall remain operative only until the operative date of SB 310 or AB 852, or both SB 310 and AB 852, at which time Section 4.5 of this bill shall become operative.

SEC. 38. (a) Section 8.5 of this bill incorporates amendments to Section 653f of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 653f of the Penal Code, (3) SB 1131 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1957, in which case Section 653f of the Penal Code, as amended by Section 8 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 8.5 of this bill shall become operative and Sections 8, 8.7, and 8.9 shall not become operative.

(b) Section 8.7 of this bill incorporates amendments to Section 653f of the Penal Code proposed by both this bill and SB 1131. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 653f of the Penal Code, (3) AB 1957 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1131, in which case Section 653f of the Penal Code, as amended by Section 8 of this bill shall remain operative only until the operative date of SB 1131, at which time Section 8.7 of this bill shall become operative and Sections 8, 8.5, and 8.9 of this bill shall not become operative.

(c) Section 8.9 of this bill incorporates amendments to Section 653f of the Penal Code proposed by this bill, AB 1957, and SB 1131.

It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1994, but this bill become operative first, (2) each bill amends Section 653f of the Penal Code, and (3) this bill is enacted after AB 1957 and SB 1131, in which case Section 653f of the Penal Code, as amended by Section 8 of this bill shall remain operative only until the operative date of AB 1957 and SB 1131, at which time Section 8.9 of this bill shall become operative and Sections 8, 8.5, and 8.7 of this bill shall not become operative.

SEC. 39. Section 9.3 of this bill incorporates amendments to Section 653j of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 653j of the Penal Code, and (3) this bill is enacted after AB 1957, in which case Section 653j of the Penal Code, as amended by Section 9 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 9.3 of this bill shall become operative.

SEC. 40. Section 9.7 of this bill incorporates amendments to Section 666 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 666 of the Penal Code, and (3) this bill is enacted after AB 1957, in which case Section 666 of the Penal Code, as amended by Section 9.5 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 9.7 of this bill shall become operative.

SEC. 41. Section 12.5 of this bill incorporates amendments to Section 667.9 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 667.9 of the Penal Code, and (3) this bill is enacted after AB 1957, in which case Section 667.9 of the Penal Code, as amended by Section 12 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 12.5 of this bill shall become operative.

SEC. 42. Section 13.5 of this bill incorporates amendments to Section 786 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 786 of the Penal Code, and (3) this bill is enacted after AB 1957, in which case Section 786 of the Penal Code, as amended by Section 13 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 13.5 of this bill shall become operative.

SEC. 43. Section 14.3 of this bill incorporates amendments to Section 868.5 of the Penal Code proposed by both this bill and SB 739. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 868.5 of the Penal Code,

and (3) this bill is enacted after SB 739, in which case Section 868.5 of the Penal Code, as amended by Section 14 of this bill, shall remain operative only until the operative date of SB 739, at which time Section 14.3 of this bill shall become operative.

SEC. 44. Section 14.7 of this bill incorporates amendments to Section 999e of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 999e of the Penal Code, and (3) this bill is enacted after AB 1957, in which case Section 999e of the Penal Code, as amended by Section 14.5 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 14.7 of this bill shall become operative.

SEC. 45. (a) Section 15.5 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill and AB 25. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1170.1 of the Penal Code, (3) AB 41 and AB 1330 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 25, in which case Section 1170.1 of the Penal Code, as amended by Section 15 of this bill shall remain operative only until the operative date of AB 25, at which time Section 15.5 of this bill shall become operative and Sections 15, 15.7, 15.9, 15.95, 15.96, 15.97, and 15.98 of this bill shall not become operative.

(b) Section 15.7 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill and AB 1330. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1170.1 of the Penal Code, (3) AB 25 and AB 41 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1330, in which case Section 1170.1 of the Penal Code, as amended by Section 15 of this bill shall remain operative until the operative date of AB 1330, at which time Section 15.7 of this bill shall become operative and Sections 15, 15.5, 15.9, 15.95, 15.96, 15.97, and 15.98 shall not become operative.

(c) Section 15.9 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill, AB 25, and AB 1330. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1170.1 of the Penal Code, (3) AB 41 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 25 and AB 1330, in which case Section 1170.1 of the Penal Code, as amended by Section 15 of this bill, shall remain operative only until the operative date of AB 25 and AB 1330, at which time Section 15.9 of this bill shall become operative and Sections 15, 15.5, 15.7, 15.95, 15.96, 15.97, and 15.98 of this bill shall not become operative.

(d) Section 15.95 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill and AB 41. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1170.1 of the Penal Code, (3) AB 25 and AB 1330 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 41, in which case Section 1170.1 of the Penal Code, as amended by Section 15 of this bill shall remain operative until the operative date of AB 41, at which time Section 15.95 of this bill shall become operative and Sections 15, 15.5, 15.7, 15.9, 15.96, 15.97, and 15.98 shall not become operative.

(e) Section 15.96 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill, AB 25, and AB 41. It shall only becomes operative if (1) all three bills are enacted and become effective on or before January 1, 1994, but this bill become operative first (2) each bill amends Section 1170.1 of the Penal Code, (3) AB 1330 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 25 and AB 41, in which case Section 1170.1 of the Penal Code, as amended by Section 15 of this bill, shall remain operative only until the operative date of AB 25 and AB 41, at which time Section 15.96 of this bill shall become operative and Sections 15, 15.5, 15.7, 15.9, 15.95, 15.97, and 15.98 of this bill shall not become operative.

(f) Section 15.97 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill, AB 41, and AB 1330. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1170.1 of the Penal Code, (3) AB 25 is not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 41 and AB 1330, in which case Section 1170.1 of the Penal Code, as amended by Section 15 of this bill shall remain operative until the operative date of AB 41 and AB 1330, at which time Section 15.97 of this bill shall become operative and Sections 15, 15.5, 15.7, 15.9, 15.95, 15.96, and 15.98 shall not become operative.

(g) Section 15.98 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill, AB 25, AB 41, and AB 1330. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first (2) each bill amends Section 1170.1 of the Penal Code, and (3) this bill is enacted after AB 25, AB 41, and AB 1330, in which case Section 1170.1 of the Penal Code, as amended by Section 15 of this bill, shall remain operative only until the operative date of AB 25, AB 41, and AB 1330, at which time Section 15.98 of this bill shall become operative and Sections 15, 15.5, 15.7, 15.9, 15.95, 15.96, and 15.97 of this bill shall not become operative.

SEC. 46. Section 16.5 of this bill incorporates amendments to Section 1192.7 of the Penal Code proposed by both this bill and AB 327. It shall only become operative if (1) both bills are enacted and

become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1192.7 of the Penal Code, and (3) this bill is enacted after AB 327, in which case Section 1192.7 of the Penal Code, as amended by Section 16 of this bill, shall remain operative only until the operative date of AB 327, at which time Section 16.5 of this bill shall become operative.

SEC. 47. Section 17.5 of this bill incorporates amendments to Section 1202.5 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1202.5 of the Penal Code, and (3) this bill is enacted after AB 1957, in which case Section 1202.5 of the Penal Code, as amended by Section 17 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 17.5 of this bill shall become operative.

SEC. 48. (a) Section 18.3 of this bill incorporates amendments to Section 1203 of the Penal Code proposed by both this bill and AB 306. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1203 of the Penal Code, and (3) AB 1957 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 306, in which case Section 1203 of the Penal Code, as amended by Section 18 of this bill, shall remain operative only until the operative date of AB 306, at which time Section 18.3 of this bill shall become operative and Sections 18, 18.5, and 18.7 of this bill shall not become operative.

(b) Section 18.5 of this bill incorporates amendments to Section 1203 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1203 of the Penal Code, and (3) AB 306 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1957, in which case Section 1203 of the Penal Code, as amended by Section 18 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 18.5 of this bill shall become operative and Sections 18, 18.3, and 18.7 of this bill shall not become operative.

(c) Section 18.7 of this bill incorporates amendments to Section 1203 of the Penal Code proposed by this bill, AB 306, and AB 1957. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1203 of the Penal Code, and (3) this bill is enacted after AB 306 and AB 1957, in which case Section 1203 of the Penal Code, as amended by Section 18 of this bill, shall remain operative only until the operative date of AB 306 and AB 1957, at which time Section 18.7 of this bill shall become operative and Sections 18, 18.3, and 18.5 of this bill shall not become operative.

SEC. 49. Section 24.3 of this bill incorporates amendments to Section 1601 of the Penal Code proposed by both this bill and AB

1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1601 of the Penal Code, and (3) this bill is enacted after AB 1957, in which case Section 1601 of the Penal Code, as amended by Section 24 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 24.3 of this bill shall become operative.

SEC. 50. (a) Section 25.6 of this bill incorporates amendments to Section 12021.1 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 12021.1 of the Penal Code, (3) AB 1608 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1957, in which case Section 12021.1 of the Penal Code, as amended by Section 25.5 of this bill shall remain operative only until the operative date of AB 1957, at which time Section 25.6 of this bill shall become operative and Sections 25.5, 25.7, and 25.9 of this bill shall not become operative.

(b) Section 25.7 of this bill incorporates amendments to Section 12021.1 of the Penal Code proposed by both this bill and AB 1608. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 12021.1 of the Penal Code, (3) AB 1975 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1608, in which case Section 12021.1 of the Penal Code, as amended by Section 25.5 of this bill shall remain operative until the operative date of AB 1608, at which time Section 25.7 of this bill shall become operative and Sections 25.5, 25.6, and 25.9 shall not become operative.

(c) Section 25.9 of this bill incorporates amendments to Section 12021.1 of the Penal Code proposed by this bill, AB 1608, and AB 1957. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 12021.1 of the Penal Code, and (3) this bill is enacted after AB 1608 and AB 1957, in which case Section 12021.1 of the Penal Code, as amended by Section 25.5 of this bill, shall remain operative only until the operative date of AB 1608 and AB 1957, at which time Section 25.9 of this bill shall become operative and Sections 25.5, 25.6, and 25.7 of this bill shall not become operative.

SEC. 51. Section 27.5 of this bill incorporates amendments to Section 12022.5 of the Penal Code proposed by both this bill and SB 310. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 12022.5 of the Penal Code, and (3) this bill is enacted after SB 310, in which case Section 12022.5 of the Penal Code, as amended by Section 27 of this bill, shall remain operative only until the operative date of SB 310, at which time Section 27.5 of this bill shall become operative.

SEC. 52. Section 28.5 of this bill incorporates amendments to Section 13853 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 13853 of the Penal Code, and (3) this bill is enacted after AB 1957, in which case Section 13853 of the Penal Code, as amended by Section 28 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 28.5 of this bill shall become operative.

SEC. 53. Section 31.5 of this bill incorporates amendments to Section 4514 of the Welfare and Institutions Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 4514 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1957, in which case Section 4514 of the Welfare and Institutions Code, as amended by Section 31 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 31.5 of this bill shall become operative.

SEC. 54. Section 32.5 of this bill incorporates amendments to Section 5328.4 of the Welfare and Institutions Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 5328.4 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1957, in which case Section 5328.4 of the Welfare and Institutions Code, as amended by Section 32 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 32.5 of this bill shall become operative.

SEC. 55. Section 33.5 of this bill incorporates amendments to Section 6500 of the Welfare and Institutions Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 6500 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1957, in which case Section 6500 of the Welfare and Institutions Code, as amended by Section 33 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 33.5 of this bill shall become operative.

SEC. 56. Section 34.5 of this bill incorporates amendments to Section 8103 of the Welfare and Institutions Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 8103 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1957, in which case Section 8103 of the Welfare and Institutions Code, as amended by Section 34 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 34.5 of this bill shall become operative.

SEC. 57. This bill shall become operative only if Senate Bill 60 of the 1993–94 Regular Session is enacted and becomes effective on or before January 1, 1994.

SEC. 58. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 59. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the people of this state from the extreme danger posed by an increasing number of carjackings and to provide a level of punishment sufficient to deter the commission of these violent crimes, it is necessary that this act take effect immediately.

CHAPTER 611

An act to amend Section 6254 of the Government Code, to amend Sections 27, 186.22, 189, 520, 653f, 653j, 666, 667.5, 667.7, 667.9, 786, 868.5, 999e, 1170.1, 1192.7, 1202.5, 1203, 1203.055, 1203.06, 1203.075, 1203.08, 1203.09, 1601, 3057, 11105.3, 12021.1, 12022, 12022.5, and 13853 of, and to add Sections 209.5 and 215 to, the Penal Code, and to amend Sections 676, 707, 4514, 5328.4, 6500, and 8103 of the Welfare and Institutions Code, relating to crime, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 6254 of the Government Code, as amended by Section 2 of Chapter 1128 of the Statutes of 1992, is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in

disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files which reflect the analysis or conclusions of

the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However,

the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, which reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or which provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing

with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, which reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or which provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services which is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time that a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals which has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, which relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department which indicates when or where the applicant is vulnerable to attack or which concerns the applicant's medical or

psychological history or that of members of his or her family.

(v) Residence addresses contained in licensure applications and registration applications for collection agencies as may be required by the Bureau of Collection and Investigative Services of the Department of Consumer Affairs pursuant to Sections 6876.2, 6877, 6878, and 6894.3 of the Business and Professions Code.

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and which reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(x) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 1.2. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and

any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, premises invasion, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height, weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or

weapons involved. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and where the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the

financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time that a contract or amendment is fully open to inspection by the

public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(v) Residence addresses contained in licensure applications and registration applications for collection agencies as may be required by the Bureau of Collection and Investigative Services of the Department of Consumer Affairs pursuant to Sections 6876.2, 6877, 6878, and 6894.3 of the Business and Professions Code.

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to

inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(x) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 1.4. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which

would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files which reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the

investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying

the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, which reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or which provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, which reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product,

theories, or strategy, or which provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services which is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time that a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals which has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, which relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department which indicates when or where the applicant is vulnerable to attack or which concerns the applicant's medical or psychological history or that of members of his or her family.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and which reveal the deliberative processes, discussions, communications, or any other portion of the negotiations

with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service

contractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 1.5. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local

agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, premises invasion, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height, weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be withheld at the victim's

request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and where the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution

Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time that a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract

is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 2. Section 27 of the Penal Code is amended to read:

27. (a) The following persons are liable to punishment under the laws of this state:

(1) All persons who commit, in whole or in part, any crime within this state.

(2) All who commit any offense without this state which, if committed within this state, would be larceny, carjacking, robbery, or embezzlement under the laws of this state, and bring the property stolen or embezzled, or any part of it, or are found with it, or any part of it, within this state.

(3) All who, being without this state, cause or aid, advise or encourage, another person to commit a crime within this state, and are afterwards found therein.

(b) Perjury, in violation of Section 118, is punishable also when committed outside of California to the extent provided in Section

118.

SEC. 3. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in the county jail.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would

best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Carjacking, as defined in Section 215.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (7), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall become operative on January 1, 1993.

(h) This section shall remain in effect only until January 1, 1997, and on that date is repealed, unless a later enacted statute which is enacted before January 1, 1997, deletes or extends that date.

SEC. 3.02. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony which is committed for the benefit of, at the

direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in the county jail.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to

produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(9) Carjacking, as defined in Section 215.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (9), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall remain in effect only until January 1, 1997, and on that date is repealed.

SEC. 3.06. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony that is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four

years, at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, that is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in a county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Premises invasion of the first degree, in violation of Section 465.

(9) Carjacking, as defined in Section 215.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (9), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall become operative on January 1, 1993.

(h) This section shall remain in effect only until January 1, 1997, and on that date is repealed, unless a later enacted statute that is enacted before January 1, 1997, deletes or extends that date.

SEC. 3.08. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) (1) Except as provided in paragraph (4), any person who is convicted of a felony which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion.

(2) If the underlying felony in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion.

(3) The court shall order the imposition of the middle term of the sentence enhancements in paragraphs (1) and (2), unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(4) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall

not be paroled until a minimum of 15 calendar years have been served.

(c) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in a county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Carjacking, as defined in Section 215.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons,

whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (8), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall become operative on January 1, 1993.

(h) This section shall remain in effect only until January 1, 1997, and on that date is repealed, unless a later enacted statute which is enacted before January 1, 1997, deletes or extends that date.

SEC. 3.09. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in

an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of the offenses occurred after the effective date of this chapter and the last of the offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Burglary, as defined in Section 459.

(9) Rape, as defined in Section 261.

(10) Looting, as defined in Section 463.

(11) Moneylaundering, as defined in Section 186.10.

(12) Kidnapping, as defined in Section 207.

(13) Mayhem, as defined in Section 203.

(14) Aggravated mayhem, as defined in Section 205.

(15) Torture, as defined in Section 206.

(16) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).

(17) Felony extortion, as defined in Sections 518 and 520.

(18) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(19) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(20) Carjacking, as defined in Section 215.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (20), inclusive, of subdivision (e), having a

common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall become operative on January 1, 1993.

(h) This section shall remain in effect only until January 1, 1997, and on that date is repealed, unless a later enacted statute which is enacted before January 1, 1997, deletes or extends that date.

SEC. 3.1. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony that is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be

served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of the offenses occurred after the effective date of this chapter and the last of the offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Premises invasion of the first degree, in violation of Section 465.

(9) Carjacking, as defined in Section 215.

(10) Burglary, as defined in Section 459.

(11) Rape, as defined in Section 261.

(12) Looting, as defined in Section 463.

(13) Moneylaundering, as defined in Section 186.10.

(14) Kidnapping, as defined in Section 207.

(15) Mayhem, as defined in Section 203.

(16) Aggravated mayhem, as defined in Section 205.

(17) Torture, as defined in Section 206.

(18) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).

(19) Felony extortion, as defined in Sections 518 and 520.

(20) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(21) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (21), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, whose

members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall become operative on January 1, 1993.

(h) This section shall remain in effect only until January 1, 1997, and on that date is repealed, unless a later enacted statute that is enacted before January 1, 1997, deletes or extends that date.

SEC. 3.2. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony that is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, that is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in a county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant

serve 180 days in a county jail.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(9) Carjacking, as defined in Section 215.

(10) Premises invasion of the first degree, in violation of Section 465.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (10), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall remain in effect only until January 1, 1997, and on that date is repealed.

SEC. 3.3. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have

engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) (1) Except as provided in paragraph (4), any person who is convicted of a felony which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion.

(2) If the underlying felony in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion.

(3) The court shall order the imposition of the middle term of the sentence enhancements in paragraphs (1) and (2), unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(4) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in a county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice

would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(9) Carjacking, as defined in Section 215.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (9), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall remain in effect only until January 1, 1997, and on that date is repealed.

SEC. 3.4. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) (1) Except as provided in paragraph (4), any person who is convicted of a felony that is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct

by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion.

(2) If the underlying felony in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion.

(3) The court shall order the imposition of the middle term of the sentence enhancements in paragraphs (1) and (2), unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(4) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, that is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in a county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to

produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Premises invasion of the first degree, in violation of Section 465.

(9) Carjacking, as defined in Section 215.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (9), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall become operative on January 1, 1993.

(h) This section shall remain in effect only until January 1, 1997, and on that date is repealed, unless a later enacted statute that is enacted before January 1, 1997, deletes or extends that date.

SEC. 3.5. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the

facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of the offenses occurred after the effective date of this chapter and the last of the offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Burglary, as defined in Section 459.

(9) Rape, as defined in Section 261.

(10) Looting, as defined in Section 463.
(11) Moneylaundering, as defined in Section 186.10.
(12) Kidnapping, as defined in Section 207.
(13) Mayhem, as defined in Section 203.
(14) Aggravated mayhem, as defined in Section 205.
(15) Torture, as defined in Section 206.
(16) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).
(17) Felony extortion, as defined in Sections 518 and 520.
(18) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.
(19) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.
(20) Carjacking, as defined in Section 215.
(21) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (21), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall become operative on January 1, 1993.

(h) This section shall remain in effect only until January 1, 1997, and on that date is repealed, unless a later enacted statute which is enacted before January 1, 1997, deletes or extends that date.

SEC. 3.6. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraph (4), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion.

(2) If the underlying felony in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the

facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years at the court's discretion.

(3) The court shall order the imposition of the middle term of the sentence enhancements in paragraphs (1) and (2), unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(4) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of the offenses occurred after the effective date of this chapter and the last of the offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Carjacking, as defined in Section 215.

(9) Burglary, as defined in Section 459.
(10) Rape, as defined in Section 261.
(11) Looting, as defined in Section 463.
(12) Moneylaundering, as defined in Section 186.10.
(13) Kidnapping, as defined in Section 207.
(14) Mayhem, as defined in Section 203.
(15) Aggravated mayhem, as defined in Section 205.
(16) Torture, as defined in Section 206.
(17) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).
(18) Felony extortion, as defined in Sections 518 and 520.
(19) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.
(20) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (20), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall become operative on January 1, 1993.

(h) This section shall remain in effect only until January 1, 1997, and on that date is repealed, unless a later enacted statute which is enacted before January 1, 1997, deletes or extends that date.

SEC. 3.7. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony that is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four

years, at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of the offenses occurred after the effective date of this chapter and the last of the offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Premises invasion of the first degree, in violation of Section 465.

(9) Carjacking, as defined in Section 215.

(10) Grand theft of any vehicle, trailer, or vessel, as described in

Section 487h.

(11) Burglary, as defined in Section 459.

(12) Rape, as defined in Section 261.

(13) Looting, as defined in Section 463.

(14) Moneylaundering, as defined in Section 186.10.

(15) Kidnapping, as defined in Section 207.

(16) Mayhem, as defined in Section 203.

(17) Aggravated mayhem, as defined in Section 205.

(18) Torture, as defined in Section 206.

(19) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).

(20) Felony extortion, as defined in Sections 518 and 520.

(21) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(22) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (22), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall remain in effect only until January 1, 1997, and on that date is repealed.

SEC. 3.8. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraph (4), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion.

(2) If the underlying felony in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four

years at the court's discretion.

(3) The court shall order the imposition of the middle term of the sentence enhancements in paragraphs (1) and (2), unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(4) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of the offenses occurred after the effective date of this chapter and the last of the offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances, as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Burglary, as defined in Section 459.

(9) Rape, as defined in Section 261.

(10) Looting, as defined in Section 463.

(11) Moneylaundering, as defined in Section 186.10.
(12) Kidnapping, as defined in Section 207.
(13) Mayhem, as defined in Section 203.
(14) Aggravated mayhem, as defined in Section 205.
(15) Torture, as defined in Section 206.
(16) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).
(17) Felony extortion, as defined in Sections 518 and 520.
(18) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.
(19) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.
(20) Carjacking, as defined in Section 215.
(21) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (21), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall remain in effect only until January 1, 1997, and on that date is repealed.

SEC. 3.9. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) (1) Except as provided in paragraph (4), any person who is convicted of a felony that is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion.

(2) If the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion.

(3) The court shall order the imposition of the middle term of the sentence enhancements in paragraphs (1) and (2), unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, that is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in a county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of the offenses occurred after the effective date of this chapter and the last of the offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(9) Carjacking, as defined in Section 215.

(10) Premises invasion of the first degree, in violation of Section 465.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (10), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall remain in effect only until January 1, 1997, and on that date is repealed.

SEC. 3.10. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraph (4), any person who is convicted of a felony that is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion.

(2) If the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion.

(3) The court shall order the imposition of the middle term of the sentence enhancements in paragraphs (1) and (2), unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(4) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall

not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of the offenses occurred after the effective date of this chapter and the last of the offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Burglary, as defined in Section 459.

(9) Rape, as defined in Section 261.

(10) Looting, as defined in Section 463.

(11) Moneylaundering, as defined in Section 186.10.

(12) Kidnapping, as defined in Section 207.

(13) Mayhem, as defined in Section 203.

(14) Aggravated mayhem, as defined in Section 205.

(15) Torture, as defined in Section 206.

(16) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).

(17) Felony extortion, as defined in Sections 518 and 520.

(18) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(19) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(20) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(21) Carjacking, as defined in Section 215.

(22) Premises invasion of the first degree, in violation of Section 465.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (22), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall remain in effect only until January 1, 1997, and on that date is repealed.

SEC. 4. Section 189 of the Penal Code is amended to read:

189. All murder which is perpetrated by means of a destructive device or explosive, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 286, 288, 288a, or 289, is murder of the first degree; and all other kinds of murders are of the second degree.

As used in this section, "destructive device" shall mean any destructive device as defined in Section 12301, and "explosive" shall mean any explosive as defined in Section 12000 of the Health and Safety Code.

To prove the killing was "deliberate and premeditated," it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

SEC. 4.5. Section 189 of the Penal Code is amended to read:

189. All murder which is perpetrated by means of a destructive device or explosive, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 286, 288, 288a, or 289, or any murder which is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree. All other kinds of murders are of the second degree.

As used in this section, "destructive device" means any destructive device as defined in Section 12301, and "explosive" means any explosive as defined in Section 12000 of the Health and Safety Code.

To prove the killing was "deliberate and premeditated," it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

SEC. 5. Section 209.5 is added to the Penal Code, to read:

209.5. (a) Any person who, during the commission of a carjacking and in order to facilitate the commission of the carjacking, kidnaps another person who is not a principal in the commission of the carjacking shall be punished by imprisonment in the state prison for life with the possibility of parole.

(b) This section shall only apply if the movement of the victim is beyond that merely incidental to the commission of the carjacking, the victim is moved a substantial distance from the vicinity of the carjacking, and the movement of the victim increases the risk of harm to the victim over and above that necessarily present in the crime of carjacking itself.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

SEC. 6. Section 215 is added to the Penal Code, to read:

215. (a) "Carjacking" is the felonious taking of a motor vehicle in the possession of another, from his or her person or immediate presence, or from the person or immediate presence of a passenger of the motor vehicle, against his or her will and with the intent to either permanently or temporarily deprive the person in possession of the motor vehicle of his or her possession, accomplished by means of force or fear.

(b) Carjacking is punishable by imprisonment in the state prison for a term of three, five, or nine years.

(c) This section shall not be construed to supersede or affect Section 211. A person may be charged with a violation of this section and Section 211. However, no defendant may be punished under this section and Section 211 for the same act which constitutes a violation of both this section and Section 211.

SEC. 7. Section 520 of the Penal Code is amended to read:

520. Every person who extorts any money or other property from another, under circumstances not amounting to robbery or carjacking, by means of force, or any threat, such as is mentioned in Section 519, shall be punished by imprisonment in the state prison for two, three or four years.

SEC. 8. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who, with the intent that the crime be committed, solicits another to offer or accept or join in the offer or

acceptance of a bribe, or to commit or join in the commission of carjacking, robbery, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, is punishable by imprisonment in the county jail not more than one year or in the state prison, or by fine of not more than ten thousand dollars ($10,000), or the amount which could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment.

(b) Every person who, with the intent that the crime be committed, solicits another to commit or join in the commission of murder is punishable by imprisonment in the state prison for three, six, or nine years.

(c) Every person who, with the intent that the crime be committed, solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or violence, or any violation of Section 264.1, 288, or 289, is punishable by imprisonment in a state prison for two, three or four years.

(d) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 11352, 11379, 11379.5, 11379.6, or 11391 of the Health and Safety Code shall be punished by imprisonment in the county jail for a period not exceeding six months. Every person, who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, then the person convicted of the subsequent offense is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.

This subdivision does not apply where the term of imprisonment imposed under other provisions of law would result in a longer term of imprisonment.

(e) An offense charged in violation of subdivision (a), (b), or (c) shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) shall be proven by the testimony of one witness and corroborating circumstances.

SEC. 8.5. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who, with the intent that the crime be committed, solicits another to offer, accept, or join in the offer or acceptance of a bribe, or to commit or join in the commission of carjacking, robbery, premises invasion, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson, or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or

testifying at, any trial, proceeding, or inquiry authorized by law, shall be punished by imprisonment in a county jail for not more than one year or in the state prison, or by fine of not more than ten thousand dollars ($10,000), or the amount that could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment.

(b) Every person who, with the intent that the crime be committed, solicits another to commit or join in the commission of murder shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Every person who, with the intent that the crime be committed, solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or violence, or any violation of Section 264.1, 288, or 289, shall be punished by imprisonment in a state prison for two, three, or four years.

(d) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 11352, 11379, 11379.5, 11379.6, or 11391 of the Health and Safety Code shall be punished by imprisonment in a county jail for a period not exceeding six months. Every person, who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, then the person convicted of the subsequent offense shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

This subdivision does not apply where the term of imprisonment imposed under other provisions of law would result in a longer term of imprisonment.

(e) An offense charged in violation of subdivision (a), (b), or (c) shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) shall be proven by the testimony of one witness and corroborating circumstances.

SEC. 8.7. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who, with the intent that the crime be committed, solicits another to offer or accept or join in the offer or acceptance of a bribe, or to commit or join in the commission of carjacking, robbery, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, shall be punished by imprisonment in a county jail for not more than one year or in the state prison, or by a fine of not more than ten thousand dollars ($10,000), or the amount which could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment.

(b) Every person who, with the intent that the crime be

committed, solicits another to commit or join in the commission of murder shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Every person who, with the intent that the crime be committed, solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or violence, or any violation of Section 264.1, 288, or 289, shall be punished by imprisonment in the state prison for two, three, or four years.

(d) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 11352, 11379, 11379.5, 11379.6, or 11391 of the Health and Safety Code shall be punished by imprisonment in a county jail not exceeding six months. Every person, who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

This subdivision does not apply where the term of imprisonment imposed under other provisions of law would result in a longer term of imprisonment.

(e) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 14014 of the Welfare and Institutions Code shall be punished by imprisonment in a county jail for not exceeding six months. Every person who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

(f) An offense charged in violation of subdivision (a), (b), or (c) shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) or (e) shall be proven by the testimony of one witness and corroborating circumstances.

SEC. 8.9. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who, with the intent that the crime be committed, solicits another to offer, accept, or join in the offer or acceptance of a bribe, or to commit or join in the commission of carjacking, robbery, premises invasion, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, shall be punished by imprisonment in a county jail for not more than one year or in the state prison, or by a fine of not more than ten thousand dollars ($10,000), or the amount that could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment.

(b) Every person who, with the intent that the crime be committed, solicits another to commit or join in the commission of murder shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Every person who, with the intent that the crime be committed, solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or violence, or any violation of Section 264.1, 288, or 289, shall be punished by imprisonment in the state prison for two, three, or four years.

(d) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 11352, 11379, 11379.5, 11379.6, or 11391 of the Health and Safety Code shall be punished by imprisonment in a county jail not exceeding six months. Every person, who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

This subdivision does not apply where the term of imprisonment imposed under other provisions of law would result in a longer term of imprisonment.

(e) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 14014 of the Welfare and Institutions Code shall be punished by imprisonment in a county jail for not exceeding six months. Every person who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

(f) An offense charged in violation of subdivision (a), (b), or (c) shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) or (e) shall be proven by the testimony of one witness and corroborating circumstances.

SEC. 9. Section 653j of the Penal Code is amended to read:

653j. (a) Every person 18 years of age or older who, in any voluntary manner, solicits, induces, encourages, or intimidates any minor with the intent that the minor shall commit a felony in violation of paragraph (1) of subdivision (c) of Section 136.1 or Section 187, 211, 215, 245, 246, 451, 459, or 520 of the Penal Code, or Section 10851 of the Vehicle Code, shall be punished by imprisonment in the state prison for a period of three, five, or seven years. If the minor is 16 years of age or older at the time of the offense, this section shall only apply when the adult is at least five years older than the minor at the time the offense is committed.

(b) In no case shall the court impose a sentence pursuant to subdivision (a) which exceeds the maximum penalty prescribed for the felony offense for which the minor was solicited, induced, encouraged, or intimidated to commit.

(c) Whenever a sentence is imposed under subdivision (a), the court shall consider the severity of the underlying crime as one of the circumstances in aggravation.

SEC. 9.5. Section 653j of the Penal Code is amended to read:

653j. (a) Every person 18 years of age or older who, in any voluntary manner, solicits, induces, encourages, or intimidates any minor with the intent that the minor shall commit a felony in violation of paragraph (1) of subdivision (c) of Section 136.1 or Section 187, 211, 215, 245, 246, 451, 459, 465, or 520 of the Penal Code, or Section 10851 of the Vehicle Code, shall be punished by imprisonment in the state prison for a period of three, five, or seven years. If the minor is 16 years of age or older at the time of the offense, this section shall only apply when the adult is at least five years older than the minor at the time the offense is committed.

(b) In no case shall the court impose a sentence pursuant to subdivision (a) that exceeds the maximum penalty prescribed for the felony offense for which the minor was solicited, induced, encouraged, or intimidated to commit.

(c) Whenever a sentence is imposed under subdivision (a), the court shall consider the severity of the underlying crime as one of the circumstances in aggravation.

SEC. 10. Section 666 of the Penal Code is amended to read:

666. Every person who, having been convicted of petit theft, grand theft, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496 and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of petit theft, then the person convicted of that subsequent offense is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.

SEC. 10.5. Section 666 of the Penal Code is amended to read:

666. Every person who, having been convicted of petit theft, grand theft, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, premises invasion, robbery, or a felony violation of Section 496 and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of petit theft, then the person convicted of that subsequent offense shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

SEC. 11. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision

for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) of subdivision (a) of Section 261.

(4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(6) Lewd acts on a child under the age of 14 years as defined in Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5 or 12022.55.

(9) Any robbery perpetrated in an inhabited dwelling house, vessel, as defined in Section 21 of the Harbors and Navigation Code, which is inhabited and designed for habitation, an inhabited floating home as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, an inhabited trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(10) Arson in violation of subdivision (a) of Section 451.

(11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(12) Attempted murder.
(13) A violation of Section 12308.
(14) Kidnapping in violation of subdivision (b) of Section 207.
(15) Kidnapping as punished in subdivision (b) of Section 208.
(16) Continuous sexual abuse of a child in violation of Section 288.5.
(17) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a dangerous or deadly weapon as provided in subdivision (b) of Section 12022 in the commission of the carjacking.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole whichever first occurs including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one

year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 12. Section 667.7 of the Penal Code is amended to read:

667.7. (a) Any person convicted of a felony in which the person inflicted great bodily injury as provided in Section 12022.7, or personally used force which was likely to produce great bodily injury, who has served two or more prior separate prison terms as defined in Section 667.5 for the crime of murder; attempted murder; voluntary manslaughter; mayhem; rape by force, violence, or fear of immediate and unlawful bodily injury on the victim or another person; oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; lewd acts on a child under the age of 14 years by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; a violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; kidnapping as punished in subdivision (d) of Section 208, or for ransom, extortion, or robbery; robbery involving the use of force or a deadly weapon; assault with intent to commit murder; assault with a deadly weapon; carjacking involving the use of a deadly weapon; assault with intent to commit murder; assault with a deadly weapon; assault with a force likely to produce great bodily injury; assault with intent to commit rape, sodomy, oral copulation, penetration of a vaginal or anal opening in violation of Section 289, or lewd and lascivious acts on a child; arson of a structure; escape or attempted escape by an inmate with force or violence in violation of subdivision (a) of Section 4530, or of Section 4532; exploding a device with intent to murder in violation of Section 12308; exploding a destructive device which causes bodily injury in violation of Section 12309, or mayhem or great bodily injury in violation of Section 12310; exploding a destructive device with intent to injure, intimidate, or terrify, in violation of Section 12303.3; any felony in which the person

inflicted great bodily injury as provided in Section 12022.7; or any felony punishable by death or life imprisonment with or without the possibility of parole is a habitual offender and shall be punished as follows:

(1) A person who served two prior separate prison terms shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 20 years, or the term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046, whichever is greatest. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but the person shall not otherwise be released on parole prior to that time.

(2) Any person convicted of a felony specified in this subdivision who has served three or more prior separate prison terms, as defined in Section 667.5, for the crimes specified in subdivision (a) of this section shall be punished by imprisonment in the state prison for life without the possibility of parole.

(b) This section shall not prevent the imposition of the punishment of death or imprisonment for life without the possibility of parole. No prior prison term shall be used for this determination which was served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. As used in this section, a commitment to the Department of the Youth Authority after conviction for a felony shall constitute a prior prison term. The term imposed under this section shall be imposed only if the prior prison terms are alleged under this section in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.

SEC. 13. Section 667.9 of the Penal Code is amended to read:

667.9. (a) Any person who commits one or more of the crimes listed in paragraphs (1) to (8), inclusive, of subdivision (c) against a person who is 65 years of age or older, or against a person who is blind, a paraplegic, or a quadriplegic, or against a person who is under the age of 14 years, and that disability or condition is known or reasonably should be known to the person committing the crime, shall receive a one-year enhancement for each violation in addition to the sentence provided under Section 667.

(b) Any person who has a prior conviction for any of the offenses listed in subdivision (c), and who commits one or more of the crimes listed in that subdivision against a person who is 65 years of age or older, or against a person who is blind, deaf, developmentally disabled, a paraplegic, or a quadriplegic, or against a person who is under the age of 14 years, and that disability or condition is known

or reasonably should be known to the person committing the crime, shall receive a two-year enhancement for each violation in addition to the sentence provided under Section 667.

(c) Subdivisions (a) and (b) apply to the following crimes:

(1) Robbery, in violation of Section 211.

(2) Kidnapping, in violation of Section 207.

(3) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(4) Rape by force, violence, or fear of immediate and unlawful bodily injury on the victim or another person in violation of paragraph (2) of subdivision (a) of Section 261.

(5) Sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person in violation of Section 286 or 288a.

(6) Mayhem, as defined in Section 203.

(7) Carjacking, in violation of Section 215.

(8) Burglary of the first degree, as defined in Section 460.

(d) The existence of any fact which would bring a person under subdivision (a) or (b) shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(e) As used in this section, "developmentally disabled" means a severe, chronic disability of a person, which is all of the following:

(1) Attributable to a mental or physical impairment or a combination of mental and physical impairments.

(2) Likely to continue indefinitely.

(3) Results in substantial functional limitation in three or more of the following areas of life activity:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

SEC. 13.5. Section 667.9 of the Penal Code is amended to read:

667.9. (a) Any person who commits one or more of the crimes listed in paragraphs (1) to (9), inclusive, of subdivision (c) against a person who is 65 years of age or older, or against a person who is blind, a paraplegic, or a quadriplegic, or against a person who is under the age of 14 years, and that disability or condition is known or reasonably should be known to the person committing the crime, shall receive a one-year enhancement for each violation in addition to the sentence provided under Section 667.

(b) Any person who has a prior conviction for any of the offenses listed in subdivision (c), and who commits one or more of the crimes listed in that subdivision against a person who is 65 years of age or

older, or against a person who is blind, deaf, developmentally disabled, a paraplegic, or a quadriplegic, or against a person who is under the age of 14 years, and that disability or condition is known or reasonably should be known to the person committing the crime, shall receive a two-year enhancement for each violation in addition to the sentence provided under Section 667.

(c) Subdivisions (a) and (b) apply to the following crimes:

(1) Robbery, in violation of Section 211.

(2) Kidnapping, in violation of Section 207.

(3) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(4) Rape by force, violence, or fear of immediate and unlawful bodily injury on the victim or another person in violation of paragraph (2) of subdivision (a) of Section 261.

(5) Sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person in violation of Section 286 or 288a.

(6) Mayhem, as defined in Section 203.

(7) Carjacking, in violation of Section 215.

(8) Premises invasion of the first degree in violation of Section 465.

(9) Burglary of the first degree, as defined in Section 460.

(d) The existence of any fact that would bring a person under subdivision (a) or (b) shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(e) As used in this section, "developmentally disabled" means a severe, chronic disability of a person, which is all of the following:

(1) Attributable to a mental or physical impairment or a combination of mental and physical impairments.

(2) Likely to continue indefinitely.

(3) Results in substantial functional limitation in three or more of the following areas of life activity:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

SEC. 14. Section 786 of the Penal Code is amended to read:

786. When property taken in one jurisdictional territory by burglary, carjacking, robbery, theft, or embezzlement has been brought into another, or when property is received in one jurisdictional territory with the knowledge that it has been stolen or embezzled and the property was stolen or embezzled in another jurisdictional territory, the jurisdiction of the offense is in any

competent court within either jurisdictional territory, or any contiguous jurisdictional territory if the arrest is made within the contiguous territory, the prosecution secures on the record the defendant's knowing, voluntary, and intelligent waiver of the right of vicinage, and the defendant is charged with one or more property crimes in the arresting territory.

SEC. 14.5. Section 786 of the Penal Code is amended to read:

786. When property taken in one jurisdictional territory by burglary, carjacking, premises invasion, robbery, theft, or embezzlement has been brought into another, or when property is received in one jurisdictional territory with the knowledge that it has been stolen or embezzled and the property was stolen or embezzled in another jurisdictional territory, the jurisdiction of the offense is in any competent court within either jurisdictional territory, or any contiguous jurisdictional territory if the arrest is made within the contiguous territory, the prosecution secures on the record the defendant's knowing, voluntary, and intelligent waiver of the right of vicinage, and the defendant is charged with one or more property crimes in the arresting territory.

SEC. 15. Section 868.5 of the Penal Code is amended to read:

868.5. (a) Notwithstanding any other law, a prosecuting witness in a case involving a violation of Section 187, 203, 205, 207, 211, 215, 220, 240, 242, 243.4, 245, 261, 262, 273a, 273d, 273.5, 273.6, 277, 285, 286, 288, 288a, 288.5, 289, 647.6, or former Section 647a, or a violation of subdivision (1) of Section 314, shall be entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. The person or persons so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person or persons are related to the prosecuting witness as a parent, guardian, or sibling and do not make notes during the hearing or proceeding.

(b) If the person or persons so chosen are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall

preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

SEC. 15.5. Section 868.5 of the Penal Code is amended to read:

868.5. (a) Notwithstanding any other law, a prosecuting witness in a case involving a violation of Section 187, 203, 205, 207, 211, 215, 220, 240, 242, 243.4, 245, 261, 262, 273a, 273d, 273.5, 273.55, 273.6, 277, 285, 286, 288, 288a, 288.5, 289, 647.6, or former Section 647a, or a violation of subdivision (1) of Section 314, shall be entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. The person or persons so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person or persons are related to the prosecuting witness as a parent, guardian, or sibling and do not make notes during the hearing or proceeding.

(b) If the person or persons so chosen are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given

by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

SEC. 16. Section 999e of the Penal Code is amended to read:

999e. (a) An individual shall be the subject of career criminal prosecution efforts who is under arrest for the commission or attempted commission of one or more of the following felonies: robbery, carjacking, burglary, arson, any unlawful act relating to controlled substances in violation of Section 11351, 11351.5, or 11352 of the Health and Safety Code, receiving stolen property, grand theft and grand theft auto, and lewd or lascivious conduct upon a child; and who is either being prosecuted for three or more separate offenses not arising out of the same transaction involving one or more of these felonies, or has suffered at least one conviction during the preceding 10 years for any felony listed in paragraph (1) of this subdivision, or at least two convictions during the preceding 10 years for any felony listed in paragraph (2) of this subdivision:

(1) Robbery of the first degree, carjacking, burglary of the first degree, arson as defined in Section 451, unlawfully causing a fire as defined in Section 452, forcible rape, sodomy or oral copulation committed with force, lewd or lascivious conduct committed upon a child, kidnapping as defined in Section 209, or murder.

(2) Grand theft, grand theft auto, receiving stolen property, robbery of the second degree, burglary of the second degree, kidnapping as defined in Section 207, assault with a deadly weapon or instrument, or any unlawful act relating to controlled substances in violation of Section 11351 or 11352 of the Health and Safety Code.

For purposes of this chapter, the 10-year periods specified in this section shall be exclusive of any time which the arrested person has served in state prison.

(b) In applying the career criminal selection criteria set forth above, a district attorney may elect to limit career criminal prosecution efforts to persons arrested for any one or more of the felonies listed in subdivision (a) of this section if crime statistics demonstrate that the incidence of one or more of these felonies presents a particularly serious problem in the county.

(c) In exercising the prosecutorial discretion granted by Section 999g, the district attorney shall consider the following: (1) the character, background, and prior criminal background of the defendant; and (2) the number and the seriousness of the offenses currently charged against the defendant.

SEC. 16.5. Section 999e of the Penal Code is amended to read:

999e. (a) An individual shall be the subject of career criminal prosecution efforts who is under arrest for the commission or attempted commission of one or more of the following felonies: robbery, carjacking, premises invasion, burglary, arson, any unlawful act relating to controlled substances in violation of Section 11351,

11351.5, or 11352 of the Health and Safety Code, receiving stolen property, grand theft and grand theft auto, and lewd or lascivious conduct upon a child; and who is either being prosecuted for three or more separate offenses not arising out of the same transaction involving one or more of these felonies, or has suffered at least one conviction during the preceding 10 years for any felony listed in paragraph (1) of this subdivision, or at least two convictions during the preceding 10 years for any felony listed in paragraph (2) of this subdivision:

(1) Robbery of the first degree, carjacking, premises invasion of the first degree, burglary of the first degree, arson as defined in Section 451, unlawfully causing a fire as defined in Section 452, forcible rape, sodomy or oral copulation committed with force, lewd or lascivious conduct committed upon a child, kidnapping as defined in Section 209, or murder.

(2) Grand theft, grand theft auto, receiving stolen property, robbery of the second degree, premises invasion of the second degree, burglary of the second degree, kidnapping as defined in Section 207, assault with a deadly weapon or instrument, or any unlawful act relating to controlled substances in violation of Section 11351 or 11352 of the Health and Safety Code.

For purposes of this chapter, the 10-year periods specified in this section shall be exclusive of any time that the arrested person has served in state prison.

(b) In applying the career criminal selection criteria set forth above, a district attorney may elect to limit career criminal prosecution efforts to persons arrested for any one or more of the felonies listed in subdivision (a) of this section if crime statistics demonstrate that the incidence of one or more of these felonies presents a particularly serious problem in the county.

(c) In exercising the prosecutorial discretion granted by Section 999g, the district attorney shall consider the following:

(1) The character, background, and prior criminal background of the defendant.

(2) The number and the seriousness of the offenses currently charged against the defendant.

SEC. 17. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section

667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8), (9), or (16) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving both separate victims and separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims and separate occasions.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from such custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape, carjacking, or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.6, 12022.7,

12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 17.5. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8), (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving both separate victims and separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims and separate occasions.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, carjacking, rape or burglary, or

attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.15, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 17.7. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a

different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8), (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving both separate victims and separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims and separate occasions.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from such custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence

from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, carjacking, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is

imposed pursuant to Section 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 17.9. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment

prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8), (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving both separate victims and separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims and separate occasions.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the

additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, carjacking, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.15, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in Sections

667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 17.95. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8), (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or

12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from such custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of such additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of lewd or lascivious acts upon or with a child under

the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, carjacking, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether such enhancements are pursuant to this or some other section of law. Each of such enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 17.96. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8), (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the

same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, carjacking, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.15, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in

Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 17.97. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense

which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8), (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, carjacking, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to

subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 17.98. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8), (9), or

(17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering

the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, carjacking, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.15, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in Sections 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the

additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 18. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act on a child under the age of 14 years; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any other felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing great bodily injury or mayhem; (17) exploding a destructive device or any explosive with

intent to murder; (18) burglary of an inhabited dwelling house, or trailer coach as defined by the Vehicle Code, or inhabited portion of any other building; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) grand theft involving a firearm; (27) carjacking; and (28) any attempt to commit a crime listed in this subdivision other than an assault.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 18.5. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any

offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act on a child under the age of 14 years; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any other felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing great bodily injury or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) burglary of an inhabited dwelling house, or trailer coach as defined by the Vehicle Code, or inhabited portion of any other building; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force,

violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) grand theft involving a firearm; (27) carjacking; any attempt to commit a crime listed in this subdivision other than an assault; and (20) any conspiracy to commit an offense described in paragraph (24) as it applies to Section 11370.4 of the Health and Safety Code where the defendant conspirator was substantially involved in the planning, direction, or financing of the underlying offense.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 19. Section 1202.5 of the Penal Code is amended to read:

1202.5. (a) In any case in which a defendant is convicted of any of the offenses enumerated in Section 211, 215, 459, 487, or 488, the court may order the defendant to pay a fine of ten dollars ($10) in addition to any other penalty or fine imposed. If the court determines that the defendant has the ability to pay all or part of the fine, the court may set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any other fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

(b) All fines collected pursuant to this section shall be transferred to the local law enforcement agency in the jurisdiction where the offense took place. All moneys collected shall be used exclusively to

implement, support, and continue local crime prevention programs.

(c) As used in this section, "law enforcement agency" includes, but is not limited to, police departments, sheriffs departments, and probation departments.

SEC. 19.5. Section 1202.5 of the Penal Code is amended to read:

1202.5. (a) In any case in which a defendant is convicted of any of the offenses enumerated in Section 211, 215, 459, 465, 487, or 488, the court may order the defendant to pay a fine of ten dollars ($10) in addition to any other penalty or fine imposed. If the court determines that the defendant has the ability to pay all or part of the fine, the court may set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any other fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

(b) All fines collected pursuant to this section shall be transferred to the local law enforcement agency in the jurisdiction where the offense took place. All moneys collected shall be used exclusively to implement, support, and continue local crime prevention programs.

(c) As used in this section, "law enforcement agency" includes, but is not limited to, police, sheriffs, and probation departments.

SEC. 20. Section 1203 of the Penal Code, as amended by Section 14 of Chapter 59 of the Statutes of 1993, is amended to read:

1203. (a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of the probation officer. As used in this code, "conditional sentence" shall mean the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) Except as provided in subdivision (j), in every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any

information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in the report his or her recommendation of the amount the defendant should be required to pay as a restitution fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report a recommendation as to whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund. The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney, nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered the report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) In every case in which a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If such a case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person which could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not

be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and was armed with a deadly weapon at either of those times.

(2) Any person who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

(B) The person used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an

inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machine gun under Section 12220, or a silencer under Section 12520.

(f) When probation is granted in a case which comes within the provisions of subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to Section 13967 of the Government Code in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in Section 13967 of the Government Code.

(h) In any case in which a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement in any case where the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4).

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court and as stated in the order, may be enforced in the same manner as a judgment in a civil

action, if any balance remains unpaid at the end of the defendant's probationary period.

SEC. 20.3. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of the probation officer. As used in this code, "conditional sentence" shall mean the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) Except as provided in subdivision (j), in every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in the report his or her recommendation of the amount the defendant should be required to pay as a restitution fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report a recommendation as to whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund. The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney, nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been

made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered such report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) In every case in which a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If such a case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person which could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert such information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and was armed with a deadly weapon at either of those times.

(2) Any person who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape

with force or violence, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

(B) The person used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machine gun under Section 12220, or a silencer under Section 12520.

(f) When probation is granted in a case which comes within the provisions of subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to Section 13967 of the Government Code in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make

a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in Section 13967 of the Government Code.

(h) In any case in which a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement in any case where the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4) and the probationer has reimbursed the county that has jurisdiction over his or her probation case the reasonable costs of processing his or her request for interstate compact supervision. The amount and method of reimbursement shall be in accordance with Section 1203.1b.

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court and as stated in the order, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

SEC. 20.5. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of the probation officer. As used in this code, "conditional sentence" shall mean the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) Except as provided in subdivision (j), in every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the

matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, that may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, that shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in the report his or her recommendation of the amount the defendant should be required to pay as a restitution fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report a recommendation as to whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund. The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney, nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered the report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) In every case in which a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a

conditional sentence. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person that could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, premises invasion, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and was armed with a deadly weapon, other than a firearm, at either of those times.

(2) Any person who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense that, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense that, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, premises invasion, rape with force or violence, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense that, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

(B) The person used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machine gun under Section 12220, or a silencer under Section 12520.

(f) When probation is granted in a case that comes within the provisions of subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to Section 13967 of the Government Code in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in Section 13967 of the Government Code.

(h) In any case in which a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement in any case where the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4).

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer,

the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court and as stated in the order, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

SEC. 20.7. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of the probation officer. As used in this code, "conditional sentence" shall mean the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) Except as provided in subdivision (j), in every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, that may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, that shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in the report his or her recommendation of the amount the defendant should be required to pay as a restitution fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report a recommendation as to whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund. The report shall be made available to the court and

the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney, nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered the report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) In every case in which a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person that could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, premises invasion, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and was armed with a deadly weapon, other than a firearm, at either of those times.

(2) Any person who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense that, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense that, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, premises invasion, rape with force or violence, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense that, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

(B) The person used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machine gun under Section 12220, or a silencer under Section 12520.

(f) When probation is granted in a case that comes within the provisions of subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the

interests of justice would best be served by that disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to Section 13967 of the Government Code in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in Section 13967 of the Government Code.

(h) In any case in which a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement in any case where the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4) and the probationer has reimbursed the county that has jurisdiction over his or her probation case the reasonable costs of processing his or her request for interstate compact supervision. The amount and method of reimbursement shall be in accordance with Section 1203.1b.

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court and as stated in the order, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

SEC. 21. Section 1203.055 of the Penal Code is amended to read:

1203.055. (a) Notwithstanding any other law, in sentencing a person convicted of committing or of attempting to commit one or more of the offenses listed in subdivision (b) against a person who is a passenger, operator, driver, or other occupant of any public

transit vehicle whether the offense or attempt is committed within the vehicle or directed at the vehicle, the court shall require that the person serve some period of confinement. If probation is granted, it shall be a condition of probation that the person shall be confined in the county jail for some period of time. If the time spent in jail prior to arraignment is less than 24 hours, it shall not be considered to satisfy the requirement that some period of confinement be imposed.

As used in this subdivision, "public transit vehicle" means any motor vehicle, streetcar, trackless trolley, bus, shuttle, light rail system, rapid transit system, subway, train, taxi cab, or jitney, which transports members of the public for hire.

(b) Subdivision (a) applies to the following crimes:

(1) Murder.

(2) A violation of Section 241, 241.3, 241.4, 244, 245, 245.2, or 246.

(3) Robbery, in violation of Section 211.

(4) Kidnapping, in violation of Section 207.

(5) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(6) Battery, in violation of Section 243, 243.1, or 243.3.

(7) Rape, in violation of Section 261, 262, 264, or 264.1.

(8) Assault with intent to commit rape or sodomy, in violation of Section 220.

(9) Any other offense in which the defendant inflicts great bodily injury on any person other than an accomplice. As used in this paragraph, "great bodily injury" means "great bodily injury" as defined in Section 12022.7.

(10) Grand theft, in violation of subdivision (1) of Section 487.

(11) Throwing of a hard substance or shooting a missile at the transit vehicle, in violation of Section 219.2.

(12) Unlawfully causing a fire, in violation of Section 452.

(13) Drawing, exhibiting, or using a firearm or deadly weapon, in violation of Section 417.

(14) A violation of Section 214.

(15) A violation of Section 215.

(c) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person convicted of a felony offense falling within this section if the person has been previously convicted and sentenced pursuant to this section.

(d) (1) The existence of any fact which would make a person ineligible for probation under subdivisions (a) and (c) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.

A finding bringing the defendant within this section shall not be stricken pursuant to Section 1385 or any provision of law.

(2) This subdivision does not prohibit the adjournment of criminal

proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(e) The court shall require, as a condition of probation for any person convicted of committing a crime which took place on a public transit vehicle, except in any case in which the court makes a finding and states on the record clear and compelling reasons why the condition would be inappropriate, that the person make restitution to the victim. If restitution is found to be inappropriate, the court shall require as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, that the defendant perform specified community service. Nothing in this subdivision shall be construed to limit the authority of a court to provide additional conditions of probation.

(f) In any case in which a person is convicted of committing a crime which took place on a public transit vehicle, the probation officer shall immediately investigate and report to the court at a specified time whether, as a result of the crime, property damage or loss or personal injury was caused by the defendant, the amount of the damage, loss, or injury, and the feasibility of requiring restitution to be made by the defendant. When a probation report is required pursuant to Section 1203 the information required by this subdivision shall be added to that probation report.

SEC. 22. Section 1203.06 of the Penal Code is amended to read:

1203.06. Notwithstanding the provisions of Section 1203:

(a) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons:

(1) Any person who personally used a firearm during the commission or attempted commission of any of the following crimes:

(A) Murder.

(B) Robbery, in violation of Section 211.

(C) Kidnapping, in violation of Section 207.

(D) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(E) Burglary of the first degree, as defined in Section 460.

(F) Except as provided in Section 1203.065, rape in violation of subdivision (2) of Section 261.

(G) Assault with intent to commit rape or sodomy, in violation of Section 220.

(H) Escape, in violation of Section 4530 or 4532.

(I) A felony violation of Section 136.1 or 137.

(J) Carjacking, in violation of Section 215.

(2) Any person previously convicted of a felony specified in subparagraphs (A) to (H), inclusive, or subparagraph (J), of paragraph (1), or assault with intent to commit murder under former Section 217, who is convicted of a subsequent felony and who was personally armed with a firearm at any time during its

commission or attempted commission or was unlawfully armed with a firearm at the time of his or her arrest for the subsequent felony.

(b) (1) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(3) As used in subdivision (a) "used a firearm" means to display a firearm in a menacing manner, to intentionally fire it, or to intentionally strike or hit a human being with it.

(4) As used in subdivision (a) "armed with a firearm" means to knowingly carry a firearm as a means of offense or defense.

SEC. 23. Section 1203.075 of the Penal Code is amended to read:

1203.075. Notwithstanding the provisions of Section 1203:

(a) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for, any person who, with the intent to inflict the injury, personally inflicts great bodily injury on the person of another in the commission or attempted commission of any of the following crimes:

(1) Murder.

(2) Robbery, in violation of Section 211.

(3) Kidnapping, in violation of Section 207.

(4) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(5) Burglary of the first degree, as defined in Section 460.

(6) Rape, in violation of subdivision (2) of Section 261.

(7) Assault with intent to commit rape or sodomy, in violation of Section 220.

(8) Escape, in violation of Section 4530 or 4532.

(9) A violation of subdivision (a) of Section 289.

(10) Sodomy, in violation of Section 286.

(11) Oral copulation, in violation of Section 288a.

(12) Carjacking, in violation of Section 215.

(b) (1) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.

(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(3) As used in subdivision (a), "great bodily injury" means "great

bodily injury" as defined in Section 12022.7.

SEC. 24. Section 1203.08 of the Penal Code is amended to read:

1203.08. (a) Notwithstanding any other law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any adult person convicted of a designated felony who has been previously convicted as an adult under charges separately brought and tried two or more times of any designated felony or in any other place of a public offense which, if committed in this state, would have been punishable as a designated felony, if all the convictions occurred within a 10-year period. The 10-year period shall be calculated exclusive of any period of time during which the person has been confined in a state or federal prison.

(b) (1) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(2) Except where the existence of the fact was not admitted or found to be true pursuant to paragraph (1), or the court finds that a prior conviction was invalid, the court shall not strike or dismiss any prior convictions alleged in the information or indictment.

(3) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(c) As used in this section, "designated felony" means any felony specified in Section 187, 192, 207, 209, 209.5, 211, 215, 217, 245, 288, or paragraph (2), (3), or (4) of subdivision (a) of Section 261, subdivision (a) of Section 460, or when great bodily injury occurs in perpetration of an assault to commit robbery, mayhem, or rape, as defined in Section 220.

SEC. 25. Section 1203.09 of the Penal Code is amended to read:

1203.09. (a) Notwithstanding any other law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who commits or attempts to commit one or more of the crimes listed in subdivision (b) against a person who is 60 years of age or older; or against a person who is blind, a paraplegic, a quadriplegic, or a person confined to a wheelchair and that disability is known or reasonably should be known to the person committing the crime; and who during the course of the offense inflicts great bodily injury upon the person.

(b) Subdivision (a) applies to the following crimes:

(i) Murder.

(ii) Robbery, in violation of Section 211.

(iii) Kidnapping, in violation of Section 207.

(iv) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(v) Burglary of the first degree, as defined in Section 460.

(vi) Rape by force or violence, in violation of subdivision (2) of Section 261.

(vii) Assault with intent to commit rape or sodomy, in violation of Section 220.

(viii) Carjacking, in violation of Section 215.

(c) The existence of any fact which would make a person ineligible for probation under either subdivision (a) or (f) shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(d) As used in this section "great bodily injury" means "great bodily injury" as defined in Section 12022.7.

(e) This section shall apply in all cases, including those cases where the infliction of great bodily injury is an element of the offense.

(f) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person convicted of having committed one or more of the following crimes against a person who is 60 years of age or older: assault with a deadly weapon or instrument, battery which results in physical injury which requires professional medical treatment, carjacking, robbery, or mayhem.

SEC. 26. Section 1601 of the Penal Code is amended to read:

1601. (a) In the case of any person charged with and found incompetent on a charge of, convicted of, or found not guilty by reason of insanity of murder, mayhem, aggravated mayhem, a violation of Section 207 or 209 in which the victim suffers intentionally inflicted great bodily injury, robbery or carjacking with a deadly or dangerous weapon or in which the victim suffers great bodily injury, a violation of subdivision (a) or (b) of Section 451, a violation of paragraph (2) or (3) of subdivision (a) of Section 261, a violation of Section 459 in the first degree, a violation of Section 220 in which the victim suffers great bodily injury, a violation of Section 288, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310, or any felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, outpatient status under this title shall not be available until that person has actually been confined in a state hospital or other facility for 180 days or more after having been committed under the provisions of law specified in Section 1600.

(b) In the case of any person charged with, and found incompetent on a charge of, or convicted of, any misdemeanor or any felony other than those described in subdivision (a), or found not guilty of any misdemeanor by reason of insanity, outpatient status under this title may be granted by the court prior to actual confinement in a state hospital or other treatment facility under the

provisions of law specified in Section 1600.

SEC. 26.5. Section 1601 of the Penal Code is amended to read:

1601. (a) In the case of any person charged with and found incompetent on a charge of, convicted of, or found not guilty by reason of insanity of murder, mayhem, aggravated mayhem, a violation of Section 207 or 209 in which the victim suffers intentionally inflicted great bodily injury, robbery or carjacking with a deadly or dangerous weapon or in which the victim suffers great bodily injury, a violation of subdivision (a) or (b) of Section 451, a violation of paragraph (2) or (3) of subdivision (a) of Section 261, a violation of Section 459 of the first degree, a violation of Section 465 of the first degree, a violation of Section 220 in which the victim suffers great bodily injury, a violation of Section 288, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310, or any felony involving death, great bodily injury, or an act that poses a serious threat of bodily harm to another person, outpatient status under this title shall not be available until that person has actually been confined in a state hospital or other facility for 180 days or more after having been committed under the provisions of law specified in Section 1600.

(b) In the case of any person charged with, and found incompetent on a charge of, or convicted of, any misdemeanor or any felony other than those described in subdivision (a), or found not guilty of any misdemeanor by reason of insanity, outpatient status under this title may be granted by the court prior to actual confinement in a state hospital or other treatment facility under the provisions of law specified in Section 1600.

SEC. 27. Section 3057 of the Penal Code is amended to read:

3057. (a) Confinement pursuant to a revocation of parole in the absence of a new conviction and commitment to prison under other provisions of law, shall not exceed 12 months, except as provided in subdivision (c).

(b) Upon completion of confinement pursuant to parole revocation without a new commitment to prison, the inmate shall be released on parole for a period which shall not extend beyond that portion of the maximum statutory period of parole specified by Section 3000 which was unexpired at the time of each revocation.

(c) Notwithstanding the limitations in subdivision (a) and in Section 3060.5 upon confinement pursuant to a parole revocation, the parole authority may extend the confinement pursuant to parole revocation for a maximum of an additional 12 months for subsequent acts of misconduct committed by the parolee while confined pursuant to that parole revocation. Upon a finding of good cause to believe that a parolee has committed a subsequent act of misconduct and utilizing procedures governing parole revocation proceedings, the parole authority may extend the period of confinement pursuant to parole revocation as follows: (1) not more than 180 days for an act punishable as a felony whether or not prosecution is undertaken, (2) not more than 90 days for an act punishable as a misdemeanor,

whether or not prosecution is undertaken, and (3) not more than 30 days for an act defined as a serious disciplinary offense pursuant to subdivision (a) of Section 2932.

(d) (1) Except for parolees specified in paragraph (2), any revocation period imposed under subdivision (a) may be reduced in the same manner and to the same extent as a term of imprisonment may be reduced by worktime credits under Section 2933. Worktime credit must be earned and may be forfeited pursuant to the provisions of Section 2932.

Worktime credit forfeited shall not be restored.

(2) The following parolees shall not be eligible for credit under this subdivision:

(A) Parolees who are sentenced under Section 1168 with a maximum term of life imprisonment.

(B) Parolees who violated a condition of parole relating to association with specified persons, entering prohibited areas, attendance at parole outpatient clinic, or psychiatric attention.

(C) Parolees who were revoked for conduct described in, or that could be prosecuted under any of the following sections, whether or not prosecution is undertaken: Section 189, Section 191.5, subdivision (a) or paragraph (3) of subdivision (c) of Section 192, Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of Section 241, Section 244, paragraph (1) or (2) of subdivision (a) of Section 245, paragraph (2) of subdivision (a) of Section 261, Section 264.1, subdivision (c) or (d) of Section 286, Section 288, subdivision (c) or (d) of Section 288a, Section 289, 347, or 404, subdivision (a) of Section 451, Section 12020, 12021, 12022, 12022.5, 12022.7, 12022.8, 12025, or 12560, or Section 664 for any attempt to engage in conduct described in or that could be prosecuted under any of the above-mentioned sections.

(D) Parolees who were revoked for any reason if they had been granted parole after conviction of any of the offenses specified in subparagraph (C).

(E) Parolees who the parole authority finds at a revocation hearing to be unsuitable for reduction of the period of confinement because of the circumstances and gravity of the parole violation, or because of prior criminal history.

SEC. 28. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (g) of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall

be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) Nothing in this section shall supersede any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision shall apply to, but not be limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Section 226.55 of the Civil Code.

(d) The department may adopt regulations to implement the provisions of this section as necessary.

(e) As used in this section, "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(f) As used in this section, "human resource agency" means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(g) Records of the following offenses shall be furnished as provided in subdivision (a):

(1) Violations or attempted violations of Section 220, 261, 261.5, 262, 266, 266j, 267, 272, 273a, 273d, 273.5, Sections 285 to 289, inclusive, Section 311.4, 311.10, 311.11, 314, 647.6, former Section 647a, or subdivision (a) or (d) of Section 647, or commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), provided that, except as otherwise

provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a), for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(h) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 29. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily

injury on any person, other than an accomplice, which has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any attempt to commit a crime listed in this subdivision other than an assault.

(26) Any offense enumerated in Section 12001.6.

(27) Carjacking.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

SEC. 29.3. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great

bodily injury.

(25) Any attempt to commit a crime listed in this subdivision other than an assault.

(26) Any offense enumerated in Section 12001.6.

(27) Premises invasion of the first degree.

(28) Carjacking.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 29.5. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily

injury on any person, other than an accomplice, which has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any felony violation of Section 186.22.

(26) Any attempt to commit a crime listed in this subdivision other than an assault.

(27) Any offense enumerated in Section 12001.6.

(28) Carjacking.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best

be served by such a disposition.

SEC. 29.7. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any felony violation of Section 186.22.

(26) Any attempt to commit a crime listed in this subdivision other than an assault.

(27) Any offense enumerated in Section 12001.6.

(28) Carjacking.

(29) Premises invasion of the first degree.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 30. Section 12022 of the Penal Code is amended to read:

12022. (a) (1) Except as provided in subdivisions (c) and (d), any person who is armed with a firearm in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless the arming is an element of the offense of which he or she was convicted. This additional term shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with a firearm, whether or not the person is personally armed with a firearm.

(2) Except as provided in subdivision (c), and notwithstanding subdivision (d), if the firearm is an assault weapon, as defined in Section 12276, or a machinegun, as defined in Section 12200, the additional term described in this subdivision shall be three years whether or not the arming is an element of the offense of which he or she was convicted. The additional term provided in this paragraph shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with an assault weapon or machinegun whether or not the person is personally armed with an assault weapon or machinegun.

(b) Any person who personally uses a deadly or dangerous weapon in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless use of a deadly or dangerous weapon is an element of the offense of which he or she was convicted. However, if the person has been convicted of carjacking or attempted carjacking, the additional term shall be one, two, or three years.

When a person is found to have personally used a deadly or dangerous weapon in the commission or attempted commission of a felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who is personally armed with a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for that offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(d) Notwithstanding the enhancement set forth in subdivision (a), any person who is not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission or attempted commission of an offense specified in subdivision (c), shall, upon conviction of that offense, be punished by an additional term of one, two, or three years in the court's discretion. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 31. Section 12022.5 of the Penal Code is amended to read:

12022.5. (a) Except as provided in subdivisions (b) and (c), any person who personally uses a firearm in the commission or attempted

commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years, unless use of a firearm is an element of the offense of which he or she was convicted. However, if the person has been convicted of carjacking or attempted carjacking, the additional term shall be four, five, or six years. The court shall order imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state its reasons for its enhancement choice on the record at the time of sentencing.

(b) (1) Notwithstanding subdivision (a), any person who is convicted of a felony or an attempt to commit a felony, including murder or attempted murder, in which that person discharged a firearm at an occupied motor vehicle which caused great bodily injury or death to the person of another, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for five years.

(2) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 12276, or a machinegun, as defined in Section 12200, in the commission or attempted commission of a felony, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for five years.

(c) Notwithstanding the enhancements set forth in subdivision (a), any person who personally uses a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall upon conviction of that offense and in addition and consecutive to the punishment prescribed for that offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall order the imposition of middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record.

(d) The additional term provided by this section may be imposed in cases of assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or assault with a deadly weapon which is a firearm under Section 245.

(e) When a person is found to have personally used a firearm, an assault weapon, or a machinegun in the commission or attempted commission of a felony as provided in this section and the firearm, assault weapon, or machinegun is owned by that person, the court

shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

SEC. 31.5. Section 12022.5 of the Penal Code is amended to read:

12022.5. (a) Except as provided in subdivisions (b) and (c), any person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years, unless use of a firearm is an element of the offense of which he or she was convicted. However, if the person has been convicted of carjacking or attempted carjacking, the additional term shall be four, five, or six years. The court shall order imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state its reasons for its enhancement choice on the record at the time of sentencing.

(b) (1) Notwithstanding subdivision (a), any person who is convicted of a felony or an attempt to commit a felony, including murder or attempted murder, in which that person discharged a firearm at an occupied motor vehicle which caused great bodily injury or death to the person of another, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for five years.

(2) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 12276, or a machinegun, as defined in Section 12200, in the commission or attempted commission of a felony, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for five years.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who personally uses a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall order the imposition of middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record.

(d) The additional term provided by this section may be imposed in cases of assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or assault with a deadly weapon which is a firearm under Section 245, or murder if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death.

(e) When a person is found to have personally used a firearm, an assault weapon, or a machinegun in the commission or attempted commission of a felony as provided in this section and the firearm, assault weapon, or machinegun is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

SEC. 32. Section 13853 of the Penal Code is amended to read:

13853. An individual may be the subject of career criminal apprehension efforts who is under investigation for the commission or attempted commission of one or more of the following felonies: homicide, rape or sexual assault, child molestation, robbery, carjacking, burglary, arson, any unlawful act relating to controlled substances in violation of Section 11351 or 11352 of the Health and Safety Code, receiving stolen property, grand theft and grand theft auto; and who is determined to have committed three or more separate felony offenses not arising out of the same transaction, or has suffered at least one conviction during the preceding 10 years for the commission or attempted commission of any felony listed in subdivision (a), or at least two convictions during the preceding 10 years for the commission or attempted commission of any felony listed in subdivision (b):

(a) Robbery of the first degree, carjacking, burglary of the first degree, arson as defined in Section 451 or 452, forcible rape, sodomy or oral copulation committed with force, lewd or lascivious conduct committed upon a child, kidnapping as defined in Section 209, or murder.

(b) Grand theft, grand theft auto, receiving stolen property, robbery of the second degree, burglary of the second degree, kidnapping as defined in Section 207, assault with a deadly weapon or instrument, or any unlawful act relating to controlled substances in violation of Section 11351 or 11352 of the Health and Safety Code.

For purposes of this chapter, the 10-year periods specified in this section shall be exclusive of any time which the arrested person has served in state prison.

SEC. 32.5. Section 13853 of the Penal Code is amended to read:

13853. An individual may be the subject of career criminal apprehension efforts who is under investigation for the commission or attempted commission of one or more of the following felonies: homicide, rape or sexual assault, child molestation, robbery,

carjacking, burglary, arson, premises invasion, any unlawful act relating to controlled substances in violation of Section 11351 or 11352 of the Health and Safety Code, receiving stolen property, grand theft and grand theft auto; and who is determined to have committed three or more separate felony offenses not arising out of the same transaction, or has suffered at least one conviction during the preceding 10 years for the commission or attempted commission of any felony listed in subdivision (a), or at least two convictions during the preceding 10 years for the commission or attempted commission of any felony listed in subdivision (b):

(a) Robbery of the first degree, premises invasion of the first degree, carjacking, burglary of the first degree, arson as defined in Section 451 or 452, forcible rape, sodomy or oral copulation committed with force, lewd or lascivious conduct committed upon a child, kidnapping as defined in Section 209, or murder.

(b) Grand theft, grand theft auto, receiving stolen property, robbery of the second degree, premises invasion of the second degree, burglary of the second degree, kidnapping as defined in Section 207, assault with a deadly weapon or instrument, or any unlawful act relating to controlled substances in violation of Section 11351 or 11352 of the Health and Safety Code.

For purposes of this chapter, the 10-year periods specified in this section shall be exclusive of any time that the arrested person has served in state prison.

SEC. 33. Section 676 of the Welfare and Institutions Code is amended to read:

676. (a) Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. Nothing in this section shall preclude the attendance of up to two family members of a prosecuting witness for the support of that witness, as authorized by Section 868.5 of the Penal Code. The judge or referee may nevertheless admit those persons he or she deems to have a direct and legitimate interest in the particular case or the work of the court. However, except as provided in subdivision (b), members of the public shall be admitted, on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging that a minor is a person described in Section 602 by reason of the violation of any one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(7) Any offense specified in Section 289 of the Penal Code.

(8) Kidnapping for ransom.
(9) Kidnapping for purpose of robbery.
(10) Kidnapping with bodily harm.
(11) Assault with intent to murder or attempted murder.
(12) Assault with a firearm or destructive device.
(13) Assault by any means of force likely to produce great bodily injury.
(14) Discharge of a firearm into an inhabited or occupied building.
(15) Any offense described in Section 1203.09 of the Penal Code.
(16) Any offense described in Section 12022.5 of the Penal Code.
(17) Any felony offense in which a minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.
(18) Burglary of an inhabited dwelling house or trailer coach, as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, if the minor previously has been adjudged a ward of the court by reason of the commission of any offense listed in this section, including an offense listed in this paragraph.
(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.
(20) Any offense as specified in Sections 11351, 11351.5, 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and Safety Code.
(21) Criminal street gang activity which constitutes a felony pursuant to Section 186.22 of the Penal Code.
(22) Manslaughter as specified in Section 192 of the Penal Code.
(23) Drive-by shooting or discharge of a weapon from or at a motor vehicle as specified in Sections 246, 247, and 12034 of the Penal Code.
(24) Any crime committed with an assault weapon, as defined in Section 12276 of the Penal Code, including possession of an assault weapon as specified in subdivision (b) of Section 12280 of the Penal Code.
(25) Carjacking, while armed with a dangerous or deadly weapon.
(b) Where the petition filed alleges that the minor is a person described in Section 602 by reason of the commission of rape with force or violence or great bodily harm; sodomy by force, violence, duress, menace, or threat of great bodily harm; oral copulation by force, violence, duress, menace, or threat of great bodily harm; or any offense specified in Section 289 of the Penal Code, members of the public shall not be admitted to the hearing in either of the following instances:
(1) Upon a motion for a closed hearing by the district attorney, who shall make the motion if so requested by the victim.
(2) During the victim's testimony, if, at the time of the offense the victim was under 16 years of age.
(c) The name of a minor found to have committed one of the offenses listed in subdivision (a) shall not be confidential, unless the court, for good cause, so orders.
(d) Notwithstanding Sections 827 and 828 and subject to

subdivisions (e) and (f), when a petition is sustained for any offense listed in subdivision (a), the charging petition, the minutes of the proceeding, and the orders of adjudication and disposition of the court that are contained in the court file shall be available for public inspection. Nothing in this subdivision shall be construed to authorize public access to any other documents in the court file.

(e) The probation officer or any party may petition the juvenile court to prohibit disclosure to the public of any file or record. The juvenile court shall prohibit the disclosure if it appears that the harm to the minor, victims, witnesses, or public from the public disclosure outweighs the benefit of public knowledge.

(f) Nothing in this section shall be applied to limit the disclosure of information as otherwise provided for by law.

SEC. 34. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at the hearing.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of

the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purpose of robbery.

(11) Kidnapping with bodily harm.

(12) Assault with intent to murder or attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) Any offense described in Section 1203.09 of the Penal Code.

(17) Any offense described in Section 12022.5 of the Penal Code.

(18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem as described in Section 205 of the Penal Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit

a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offenses alleged to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

(d) If, subsequent to a finding that a minor is an unfit subject to be dealt with under the juvenile court law, the minor is convicted in a court of criminal jurisdiction of an offense listed in subdivision (b) of this section or listed in paragraph (24) of subdivision (c) of Section 1192.7 of the Penal Code, the finding of unfitness which preceded the conviction is applicable to the violation of any law or ordinance defining crime which is alleged to have been committed subsequent to the conviction if the violation would otherwise cause the minor to be a person described in Section 602. The probation officer shall not be required to investigate or submit a report regarding the fitness of a minor for the subsequent charge. This subdivision shall not be construed to affect the right to appellate review of a finding of unfitness or the duration of the jurisdiction of the juvenile court as specified in Section 607.

SEC. 35. Section 4514 of the Welfare and Institutions Code is amended to read:

4514. All information and records obtained in the course of providing intake, assessment, and services under Division 4.1

(commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) to persons with developmental disabilities shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons, whether employed by a regional center or state developmental center, or not, in the provision of intake, assessment, and services or appropriate referrals. The consent of the person with a developmental disability, or his or her guardian or conservator, shall be obtained before information or records may be disclosed by regional center or state developmental center personnel to a professional not employed by the regional center or state developmental center, or a program not vendored by a regional center or state developmental center.

(b) When the person with a developmental disability, who has the capacity to give informed consent, designates individuals to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, marriage, family, and child counselor, nurse, attorney, or other professional to reveal information which has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(c) To the extent necessary for a claim, or for a claim or application to be made on behalf of a person with a developmental disability for aid, insurance, government benefit, or medical assistance to which he or she may be entitled.

(d) If the person with a developmental disability is a minor, ward, or conservatee, and his or her parent, guardian, conservator, or limited conservator with access to confidential records, designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, marriage, family, and child counselor, nurse, attorney, or other professional to reveal information which has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(e) For research, provided that the Director of Developmental Services designates by regulation rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. These rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

" _____
Date

As a condition of doing research concerning persons with developmental disabilities who have received services from _____ (fill in the facility, agency or person), I, _____, agree to obtain the prior informed consent of persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, or the person's parent, guardian, or conservator, and I further agree not to divulge any information obtained in the course of the research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services so those persons who received services are identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

_____ "
Signed

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Senate Rules Committee or the Assembly Rules Committee for the purposes of legislative investigation authorized by the committee.

(i) To the courts and designated parties as part of a regional center report or assessment in compliance with a statutory or regulatory requirement, including, but not limited to, Section 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the Penal Code, Section 6502 of the Welfare and Institutions Code, and Section 56557 of Title 17 of the California Code of Regulations.

(j) To the attorney for the person with a developmental disability in any and all proceedings upon presentation of a release of information signed by the person, except that when the person lacks the capacity to give informed consent, the regional center or state developmental center director or designee, upon satisfying himself or herself of the identity of the attorney, and of the fact that the attorney represents the person, shall release all information and records relating to the person except that nothing in this article shall be construed to compel a physician, psychologist, social worker, marriage, family, and child counselor, nurse, attorney, or other professional to reveal information which has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(k) Upon written consent by a person with a developmental

disability previously or presently receiving services from a regional center or state developmental center, the director of the regional center or state developmental center, or his or her designee, may release any information, except information which has been given in confidence by members of the family of the person with developmental disabilities, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the regional center or state developmental center director or designee determines that the information is relevant to the evaluation. The consent shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(*l*) Between persons who are trained and qualified to serve on "multidisciplinary personnel" teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) When a person with a developmental disability dies from any cause, natural or otherwise, while hospitalized in a state developmental center, the State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall release information and records to the coroner. The State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall not release any notes, summaries, transcripts, tapes, or records of conversations between the resident and health professional personnel of the hospital relating to the personal life of the resident which is not related to the diagnosis and treatment of the resident's physical condition. Any information released to the coroner pursuant to this section shall remain confidential and shall be sealed and shall not be made part of the public record.

(n) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Health Services, and who are licensed or registered health professionals, and to authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate health facilities and community care facilities, and to ensure that the standards of care and services provided in such facilities are adequate and appropriate and to ascertain compliance

with the rules and regulations to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Health Services or the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names which are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Health Services or the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Health Services or the State Department of Social Services shall not contain the name of the person with a developmental disability.

(o) To any board which licenses and certifies professionals in the fields of mental health and developmental disabilities pursuant to state law, when the Director of Developmental Services has reasonable cause to believe that there has occurred a violation of any provision of law subject to the jurisdiction of a board and the records are relevant to the violation. The information shall be sealed after a decision is reached in the matter of the suspected violation, and shall not subsequently be released except in accordance with this subdivision. Confidential information in the possession of the board shall not contain the name of the person with a developmental disability.

(p) To governmental law enforcement agencies by the director of a regional center or state developmental center, or his or her designee, when (1) the person with a developmental disability has been reported lost or missing; or (2) there is probable cause to believe that a person with a developmental disability has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, robbery, carjacking, assault with the intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, assault or battery, or unlawful possession of a weapon, as provided in Section 12020 of the Penal Code.

This subdivision shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her

treatment unless relevant to the crime involved.

This subdivision shall not be construed as an exception to, or in any other way affecting, the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, or Chapter 11 (commencing with Section 15600) and Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(q) To the Youth Authority and Adult Correctional Agency or any component thereof, as necessary to the administration of justice.

(r) To an agency mandated to investigate a report of abuse filed pursuant to either Section 11164 of the Penal Code or Section 15630 of the Welfare and Institutions Code for the purposes of either a mandated or voluntary report or when those agencies request information in the course of conducting their investigation.

(s) When a person with developmental disabilities, or the parent, guardian, or conservator of a person with developmental disabilities who lacks capacity to consent, fails to grant or deny a request by a regional center or state developmental center to release information or records relating to the person with developmental disabilities within a reasonable period of time, the director of the regional or developmental center, or his or her designee, may release information or records on behalf of that person provided both of the following conditions are met:

(1) Release of the information or records is deemed necessary to protect the person's health, safety, or welfare.

(2) The person, or the person's parent, guardian, or conservator, has been advised annually in writing of the policy of the regional center or state developmental center for release of confidential client information or records when the person with developmental disabilities, or the person's parent, guardian, or conservator, fails to respond to a request for release of the information or records within a reasonable period of time. A statement of policy contained in the client's individual program plan shall be deemed to comply with the notice requirement of this paragraph.

SEC. 35.5. Section 4514 of the Welfare and Institutions Code is amended to read:

4514. All information and records obtained in the course of providing intake, assessment, and services under Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) to persons with developmental disabilities shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons, whether employed by a regional center or state developmental center, or not, in the provision of intake, assessment, and services or appropriate referrals. The consent of the person with a

developmental disability, or his or her guardian or conservator, shall be obtained before information or records may be disclosed by regional center or state developmental center personnel to a professional not employed by the regional center or state developmental center, or a program not vendored by a regional center or state developmental center.

(b) When the person with a developmental disability, who has the capacity to give informed consent, designates individuals to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, or marriage, family, and child counselor, or nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(c) To the extent necessary for a claim, or for a claim or application to be made on behalf of a person with a developmental disability for aid, insurance, government benefit, or medical assistance to which he or she may be entitled.

(d) If the person with a developmental disability is a minor, ward, or conservatee, and his or her parent, guardian, conservator, or limited conservator with access to confidential records, designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, or marriage, family, and child counselor, or nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(e) For research, provided that the Director of Developmental Services designates by regulation rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. These rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

"_____
Date

As a condition of doing research concerning persons with developmental disabilities who have received services from _____ (fill in the facility, agency or person), I, _____, agree to obtain the prior informed consent of persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, or the person's parent, guardian, or conservator, and I further agree not to divulge any information obtained in the course of the research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services so those persons who received

services are identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

"

_____

Signed

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Senate Rules Committee or the Assembly Rules Committee for the purposes of legislative investigation authorized by the committee.

(i) To the courts and designated parties as part of a regional center report or assessment in compliance with a statutory or regulatory requirement, including, but not limited to, Section 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the Penal Code, Section 6502 of the Welfare and Institutions Code, and Section 56557 of Title 17 of the California Code of Regulations.

(j) To the attorney for the person with a developmental disability in any and all proceedings upon presentation of a release of information signed by the person, except that when the person lacks the capacity to give informed consent, the regional center or state developmental center director or designee, upon satisfying himself or herself of the identity of the attorney, and of the fact that the attorney represents the person, shall release all information and records relating to the person except that nothing in this article shall be construed to compel a physician, psychologist, social worker, marriage, family, and child counselor, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(k) Upon written consent by a person with a developmental disability previously or presently receiving services from a regional center or state developmental center, the director of the regional center or state developmental center, or his or her designee, may release any information, except information that has been given in confidence by members of the family of the person with developmental disabilities, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the regional center or state developmental center director or designee determines that the information is relevant to the evaluation. The consent shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of

sentencing. After sentencing, the confidential information shall be sealed.

(*l*) Between persons who are trained and qualified to serve on "multidisciplinary personnel" teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) When a person with a developmental disability dies from any cause, natural or otherwise, while hospitalized in a state developmental center, the State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall release information and records to the coroner. The State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall not release any notes, summaries, transcripts, tapes, or records of conversations between the resident and health professional personnel of the hospital relating to the personal life of the resident that is not related to the diagnosis and treatment of the resident's physical condition. Any information released to the coroner pursuant to this section shall remain confidential and shall be sealed and shall not be made part of the public record.

(n) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Health Services, and who are licensed or registered health professionals, and to authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate health facilities and community care facilities, and to ensure that the standards of care and services provided in the facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Health Services or the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this

subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Health Services or the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Health Services or the State Department of Social Services shall not contain the name of the person with a developmental disability.

(o) To any board that licenses and certifies professionals in the fields of mental health and developmental disabilities pursuant to state law, when the Director of Developmental Services has reasonable cause to believe that there has occurred a violation of any provision of law subject to the jurisdiction of a board and the records are relevant to the violation. The information shall be sealed after a decision is reached in the matter of the suspected violation, and shall not subsequently be released except in accordance with this subdivision. Confidential information in the possession of the board shall not contain the name of the person with a developmental disability.

(p) To governmental law enforcement agencies by the director of a regional center or state developmental center, or his or her designee, when either of the following circumstances exist:

(1) The person with a developmental disability has been reported lost or missing.

(2) There is probable cause to believe that a person with a developmental disability has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, premises invasion, robbery, carjacking, assault with the intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, assault or battery, or unlawful possession of a weapon, as provided in Section 12020 of the Penal Code.

This subdivision shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her treatment unless relevant to the crime involved.

This subdivision shall not be construed as an exception to, or in any other way affecting, the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, or Chapter 11 (commencing with Section 15600) and Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(q) To the Youth Authority and Adult Correctional Agency or any component thereof, as necessary to the administration of justice.

(r) To an agency mandated to investigate a report of abuse filed pursuant to either Section 11164 of the Penal Code or Section 15630 of the Welfare and Institutions Code for the purposes of either a mandated or voluntary report or when those agencies request information in the course of conducting their investigation.

(s) When a person with developmental disabilities, or the parent, guardian, or conservator of a person with developmental disabilities who lacks capacity to consent, fails to grant or deny a request by a regional center or state developmental center to release information or records relating to the person with developmental disabilities within a reasonable period of time, the director of the regional or developmental center, or his or her designee, may release information or records on behalf of that person provided both of the following conditions are met:

(1) Release of the information or records is deemed necessary to protect the person's health, safety, or welfare.

(2) The person, or the person's parent, guardian, or conservator, has been advised annually in writing of the policy of the regional center or state developmental center for release of confidential client information or records when the person with developmental disabilities, or the person's parent, guardian, or conservator, fails to respond to a request for release of the information or records within a reasonable period of time. A statement of policy contained in the client's individual program plan shall be deemed to comply with the notice requirement of this paragraph.

SEC. 36. Section 5328.4 of the Welfare and Institutions Code is amended to read:

5328.4. The physician in charge of the patient, or the professional person in charge of the facility or his or her designee, when he or she has probable cause to believe that a patient while hospitalized has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, carjacking, robbery, assault with intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, unlawful possession of a weapon as provided in Section 12020 of the Penal Code, or escape from a hospital by a mentally disordered sex offender as provided in Section 6330 of the Welfare and Institutions Code, shall release information about the patient to governmental law enforcement agencies.

The physician in charge of the patient, or the professional person in charge of the facility or his or her designee, when he or she has probable cause to believe that a patient, while hospitalized has committed, or has been the victim of assault or battery may release information about the patient to governmental law enforcement agencies.

This section shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her voluntary or involuntary admission, commitment, or treatment.

This section shall not be construed as an exception to or in any other way affecting the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code.

SEC. 36.5. Section 5328.4 of the Welfare and Institutions Code is amended to read:

5328.4. The physician in charge of the patient, or the professional person in charge of the facility or his or her designee, when he or she has probable cause to believe that a patient while hospitalized has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, premises invasion, carjacking, robbery, assault with intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, unlawful possession of a weapon as provided in Section 12020 of the Penal Code, or escape from a hospital by a mentally disordered sex offender as provided in Section 6330 of the Welfare and Institutions Code, shall release information about the patient to governmental law enforcement agencies.

The physician in charge of the patient, or the professional person in charge of the facility or his or her designee, when he or she has probable cause to believe that a patient, while hospitalized has committed, or has been the victim of assault or battery may release information about the patient to governmental law enforcement agencies.

This section shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her voluntary or involuntary admission, commitment, or treatment.

This section shall not be construed as an exception to or in any other way affecting the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code.

SEC. 37. Section 6500 of the Welfare and Institutions Code is amended to read:

6500. On and after July 1, 1971, no mentally retarded person may be committed to the State Department of Developmental Services pursuant to this article, unless he or she is a danger to himself or herself or others. For the purposes of this article, dangerousness to self or others shall be considered to include, but not be limited to, a finding of incompetence to stand trial pursuant to the provisions of Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code when the defendant has been charged with murder, mayhem, aggravated mayhem, a violation of Section 207 or 209 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, robbery perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, carjacking perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, a violation of subdivision (b) of Section 451 of the Penal Code, a violation of paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.3, 12308, 12309, or 12310 of the Penal Code, or if the

defendant has been charged with a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person.

Any order of commitment made pursuant to this article shall expire automatically one year after the order of commitment is made. This section shall not be construed to prohibit any party enumerated in Section 6502 from filing subsequent petitions for additional periods of commitment. In the event such subsequent petitions are filed, the procedures followed shall be the same as with an initial petition for commitment.

In any proceedings conducted under the authority of this article the alleged mentally retarded person shall be informed of his or her right to counsel by the court; and if the person does not have an attorney for the proceedings the court shall immediately appoint the public defender or other attorney to represent him or her. The person shall pay the cost for such legal service if he or she is able to do so. At any judicial proceeding under the provisions of this article, allegations that a person is mentally retarded and a danger to himself or herself or to others shall be presented by the district attorney for the county unless the board of supervisors, by ordinance or resolution, delegates such authority to the county counsel.

SEC. 37.5. Section 6500 of the Welfare and Institutions Code is amended to read:

6500. On and after July 1, 1971, no mentally retarded person may be committed to the State Department of Developmental Services pursuant to this article, unless he or she is a danger to himself or herself or others. For the purposes of this article, dangerousness to self or others shall be considered to include, but not be limited to, a finding of incompetence to stand trial pursuant to the provisions of Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code when the defendant has been charged with murder, mayhem, aggravated mayhem, a violation of Section 207 or 209 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, robbery perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, premises invasion or carjacking perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, a violation of subdivision (b) of Section 451 of the Penal Code, a violation of paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.3, 12308, 12309, or 12310 of the Penal Code, or if the defendant has been charged with a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person.

Any order of commitment made pursuant to this article shall expire automatically one year after the order of commitment is

made. This section shall not be construed to prohibit any party enumerated in Section 6502 from filing subsequent petitions for additional periods of commitment. In the event the subsequent petitions are filed, the procedures followed shall be the same as with an initial petition for commitment.

In any proceedings conducted under the authority of this article the alleged mentally retarded person shall be informed of his or her right to counsel by the court; and if the person does not have an attorney for the proceedings the court shall immediately appoint the public defender or other attorney to represent him or her. The person shall pay the cost for the legal service if he or she is able to do so. At any judicial proceeding under the provisions of this article, allegations that a person is mentally retarded and a danger to himself or herself or to others shall be presented by the district attorney for the county unless the board of supervisors, by ordinance or resolution, delegates this authority to the county counsel.

SEC. 38. Section 8103 of the Welfare and Institutions Code is amended to read:

8103. (a) (1) No person who after October 1, 1955, has been adjudicated by a court of any state to be a danger to others as a result of mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control any firearm or any other deadly weapon unless there has been issued to the person a certificate by the court of adjudication upon release from treatment or at a later date stating that the person may possess a firearm or any other deadly weapon without endangering others, and the person has not, subsequent to the issuance of the certificate, again been adjudicated by a court to be a danger to others as a result of a mental disorder or mental illness.

(2) The court shall immediately notify the Department of Justice of the court order finding the individual to be a person described in paragraph (1). The court shall also notify the Department of Justice of any certificate issued as described in paragraph (1).

(b) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of murder, mayhem, a violation of Section 207 or 209 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, carjacking or robbery in which the victim suffers great bodily injury, a violation of Section 451 or 452 of the Penal Code involving a trailer coach, as defined in Section 635 of the Vehicle Code, or any dwelling house, a violation of paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code, or of a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, or a

violation of the law of any other state or the United States that includes all the elements of any of the above felonies as defined under California law, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control any firearm or any other deadly weapon.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1).

(c) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of any crime other than those described in subdivision (b) shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon unless the court of commitment has found the person to have recovered sanity, pursuant to Section 1026.2 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her sanity.

(d) (1) No person found by a court to be mentally incompetent to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state or the United States, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon, unless there has been a finding with respect to the person of restoration to competence to stand trial by the committing court, pursuant to Section 1372 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be mentally incompetent as described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her competence.

(e) (1) No person who has been placed under conservatorship by a court, pursuant to Section 5350 or the law of any other state or the United States, because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon while under the conservatorship if, at the time the conservatorship was ordered or thereafter, the court which imposed the conservatorship found that possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others. Upon placing any person under conservatorship, and prohibiting firearm or any other deadly weapon possession by the person the court shall notify the person of this prohibition.

(2) The court shall immediately notify the Department of Justice of the court order placing the person under conservatorship and prohibiting firearm or any other deadly weapon possession by the person as described in paragraph (1). The notice shall include the date the conservatorship was imposed and the date the conservatorship is to be terminated. If the conservatorship is subsequently terminated before the date listed in the notice to the Department of Justice or the court subsequently finds that possession of a firearm or any other deadly weapon by the person would no longer present a danger to the safety of the person or others, the court shall immediately notify the Department of Justice.

(3) All information provided to the Department of Justice pursuant to paragraph (2) shall be kept confidential, separate, and apart from all other records maintained by the department, and shall be used only to determine eligibility to purchase or possess firearms or other deadly weapons. Any person who knowingly furnishes that information for any other purpose is guilty of a misdemeanor. All the information concerning any person shall be destroyed upon receipt by the Department of Justice of notice of the termination of conservatorship as to that person pursuant to paragraph (2).

(f) (1) No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. A person described in the preceding sentence, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if the superior court has, pursuant to paragraph (4), upon petition of the person, found, by a preponderance of the evidence, that the person is likely to use firearms in a safe and lawful manner.

(2) For each person subject to this subdivision, the facility shall immediately, on the date of admission, submit a report to the Department of Justice, on a form prescribed by the department, containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility.

Any report prescribed by this subdivision shall be confidential, except for purposes of the court proceedings described in this subdivision and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm.

(3) Prior to, or concurrent with, the discharge, the facility shall inform a person subject to this subdivision that he or she is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years. Simultaneously, the facility shall inform the person that he or she may petition a court, as provided

in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm.

(4) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The People of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the petition to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney was notified of the hearing date by the clerk of the court. The district attorney may notify the county mental health director of the petition who shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this section. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state summary criminal history information.

(5) Nothing in this subdivision shall prohibit the use of reports filed pursuant to this section to determine the eligibility of persons to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm.

(g) (1) No person who has been certified for intensive treatment under Section 5250, 5260, or 5270.15 shall own, possess, control,

receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years.

Any person who meets the criteria contained in subdivision (e) or (f) who is released from intensive treatment shall nevertheless, if applicable, remain subject to the prohibition contained in subdivision (e) or (f).

(2) For each person certified for intensive treatment under paragraph (1), the facility shall immediately submit a report to the Department of Justice, on a form prescribed by the department, containing information regarding the person, including, but not limited to, the legal identity of the person and the legal grounds upon which the person was certified. Any report submitted pursuant to this paragraph shall only be used for the purposes specified in paragraph (2) of subdivision (f).

(3) Prior to, or concurrent with, the discharge of each person certified for intensive treatment under paragraph (1), the facility shall inform the person of that information specified in paragraph (3) of subdivision (f).

(4) Any person who is subject to the prohibition contained in paragraph (1) may fully invoke paragraph (4) of subdivision (f).

(h) For all persons identified in subdivisions (f) and (g), facilities shall report to the Department of Justice as specified in those subdivisions, except facilities shall not report persons under subdivision (g) if the same persons previously have been reported under subdivision (f).

Additionally, all facilities shall report to the Department of Justice upon the discharge of persons from whom reports have been submitted pursuant to subdivision (f) or (g). However, a report shall not be filed for persons who are discharged within 31 days after the date of admission.

(i) Every person who owns or possesses or has under his or her custody or control, or purchases or receives, or attempts to purchase or receive, any firearm or any other deadly weapon in violation of this section is guilty of a felony which is punishable by imprisonment in the state prison, or in the county jail for not more than one year, and which is subject to subdivision (b) of Section 17 of the Penal Code.

(j) "Deadly weapon," as used in this section, has the meaning prescribed by Section 8100.

SEC. 39. Section 8103 of the Welfare and Institutions Code is amended to read:

8103. (a) (1) No person who after October 1, 1955, has been adjudicated by a court of any state to be a danger to others as a result of mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control any firearm or any other deadly weapon unless there has been issued to the person a certificate by the court of adjudication upon release from treatment or at a later date stating

that the person may possess a firearm or any other deadly weapon without endangering others, and the person has not, subsequent to the issuance of the certificate, again been adjudicated by a court to be a danger to others as a result of a mental disorder or mental illness.

(2) The court shall immediately notify the Department of Justice of the court order finding the individual to be a person described in paragraph (1). The court shall also notify the Department of Justice of any certificate issued as described in paragraph (1).

(b) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of murder, mayhem, a violation of Section 207 or 209 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, premises invasion of the first degree, carjacking or robbery in which the victim suffers great bodily injury, a violation of Section 451 or 452 of the Penal Code involving a trailer coach, as defined in Section 635 of the Vehicle Code, or any dwelling house, a violation of paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code, or of a felony involving death, great bodily injury, or an act that poses a serious threat of bodily harm to another person, or a violation of the law of any other state or the United States that includes all the elements of any of the above felonies as defined under California law, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control any firearm or any other deadly weapon.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1).

(c) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of any crime other than those described in subdivision (b) shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon unless the court of commitment has found the person to have recovered sanity, pursuant to Section 1026.2 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her sanity.

(d) (1) No person found by a court to be mentally incompetent to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state or the United States, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her

possession, custody, or control any firearm or any other deadly weapon, unless there has been a finding with respect to the person of restoration to competence to stand trial by the committing court, pursuant to Section 1372 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be mentally incompetent as described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her competence.

(e) (1) No person who has been placed under conservatorship by a court, pursuant to Section 5350 or the law of any other state or the United States, because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon while under the conservatorship if, at the time the conservatorship was ordered or thereafter, the court that imposed the conservatorship found that possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others. Upon placing any person under conservatorship, and prohibiting firearm or any other deadly weapon possession by the person the court shall notify the person of this prohibition.

(2) The court shall immediately notify the Department of Justice of the court order placing the person under conservatorship and prohibiting firearm or any other deadly weapon possession by the person as described in paragraph (1). The notice shall include the date the conservatorship was imposed and the date the conservatorship is to be terminated. If the conservatorship is subsequently terminated before the date listed in the notice to the Department of Justice or the court subsequently finds that possession of a firearm or any other deadly weapon by the person would no longer present a danger to the safety of the person or others, the court shall immediately notify the Department of Justice.

(3) All information provided to the Department of Justice pursuant to paragraph (2) shall be kept confidential, separate, and apart from all other records maintained by the department, and shall be used only to determine eligibility to purchase or possess firearms or other deadly weapons. Any person who knowingly furnishes that information for any other purpose is guilty of a misdemeanor. All the information concerning any person shall be destroyed upon receipt by the Department of Justice of notice of the termination of conservatorship as to that person pursuant to paragraph (2).

(f) (1) No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself,

herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. A person described in the preceding sentence, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if the superior court has, pursuant to paragraph (4), upon petition of the person, found, by a preponderance of the evidence, that the person is likely to use firearms in a safe and lawful manner.

(2) For each person subject to this subdivision, the facility shall immediately, on the date of admission, submit a report to the Department of Justice, on a form prescribed by the department, containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility.

Any report prescribed by this subdivision shall be confidential, except for purposes of the court proceedings described in this subdivision and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm.

(3) Prior to, or concurrent with, the discharge, the facility shall inform a person subject to this subdivision that he or she is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years. Simultaneously, the facility shall inform the person that he or she may petition a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm.

(4) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The people of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the petition to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney was notified of the hearing date by the clerk of the court. The district attorney may notify the county mental health director of the petition who shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court,

upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this section. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state summary criminal history information.

(5) Nothing in this subdivision shall prohibit the use of reports filed pursuant to this section to determine the eligibility of persons to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm.

(g) (1) No person who has been certified for intensive treatment under Section 5250, 5260, or 5270.15 shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years.

Any person who meets the criteria contained in subdivision (e) or (f) who is released from intensive treatment shall nevertheless, if applicable, remain subject to the prohibition contained in subdivision (e) or (f).

(2) For each person certified for intensive treatment under paragraph (1), the facility shall immediately submit a report to the Department of Justice, on a form prescribed by the department, containing information regarding the person, including, but not limited to, the legal identity of the person and the legal grounds upon which the person was certified. Any report submitted pursuant to this paragraph shall only be used for the purposes specified in paragraph (2) of subdivision (f).

(3) Prior to, or concurrent with, the discharge of each person certified for intensive treatment under paragraph (1), the facility shall inform the person of that information specified in paragraph (3) of subdivision (f).

(4) Any person who is subject to the prohibition contained in paragraph (1) may fully invoke paragraph (4) of subdivision (f).

(h) For all persons identified in subdivisions (f) and (g), facilities shall report to the Department of Justice as specified in those subdivisions, except facilities shall not report persons under subdivision (g) if the same persons previously have been reported under subdivision (f).

Additionally, all facilities shall report to the Department of Justice upon the discharge of persons from whom reports have been submitted pursuant to subdivision (f) or (g). However, a report shall not be filed for persons who are discharged within 31 days after the date of admission.

(i) Every person who owns or possesses or has under his or her custody or control, or purchases or receives, or attempts to purchase or receive, any firearm or any other deadly weapon in violation of this section is guilty of a felony that is punishable by imprisonment in the state prison, or in a county jail for not more than one year, and that is subject to subdivision (b) of Section 17 of the Penal Code.

(j) "Deadly weapon," as used in this section, has the meaning prescribed by Section 8100.

SEC. 40. (a) Section 1.2 of this bill incorporates amendments to Section 6254 of the Government Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 6254 of the Government Code, (3) SB 798 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1957, in which case Section 6254 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 1.2 of this bill shall become operative and Sections 1, 1.4, and 1.5 of this bill shall not become operative.

(b) Section 1.4 of this bill incorporates amendments to Section 6254 of the Government Code proposed by both this bill and SB 798. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 6254 of the Government Code, (3) AB 1957 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 798, in which case Section 6254 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of SB 798, at which time Section 1.4 of this bill shall become operative and Sections 1, 1.2, and 1.5 of this bill shall not become operative.

(c) Section 1.5 of this bill incorporates amendments to Section 6254 of the Government Code proposed by this bill, AB 1957, and SB 798. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, (2) each bill amends Section 6254 of the Government Code, and (3) this bill is enacted after AB 1957 and SB 798, in which case Section 6254 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 1957 and SB 798, at which time Section 1.5 of this bill shall become operative and Sections 1, 1.2, and 1.4 of this bill shall not become operative.

SEC. 41. (a) Section 3.02 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by both this bill and AB 1630. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends

Section 186.22 of the Penal Code, (3) AB 1957, AB 170, and SB 724 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1630, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1630, at which time Section 3.02 of this bill shall become operative.

(b) Section 3.06 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1630, AB 170, and SB 724 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1957, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 3.06 of this bill shall become operative.

(c) Section 3.08 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by both this bill and AB 170. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1957, AB 1630, and SB 724 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 170, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 170, at which time Section 3.08 of this bill shall become operative.

(d) Section 3.09 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by both this bill and SB 724. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1630, AB 1957, and AB 170 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 724, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of SB 724, at which time Section 3.09 of this bill shall become operative.

(e) Section 3.1 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1957, and SB 724. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1630 and AB 170 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1957 and SB 724, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1957 and SB 724, at which time Section 3.1 of this bill shall become operative.

(f) Section 3.2 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1957, and AB 1630. It shall only become operative if (1) each bill is enacted and becomes

effective on or before January 1, 1994, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 170 and SB 724 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1957 and AB 1630, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1957 and AB 1630, at which time Section 3.2 of this bill shall become operative.

(g) Section 3.3 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1630, and AB 170. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1957 and SB 724 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1630 and AB 170, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1630 and AB 170, at which time Section 3.3 of this bill shall become operative.

(h) Section 3.4 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1957, and AB 170. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1630 and SB 724 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1957 and AB 170, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1957 and AB 170, at which time Section 3.4 of this bill shall become operative.

(i) Section 3.5 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1630, and SB 724. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1957 and AB 170 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1630 and SB 724, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1630 and SB 724, at which time Section 3.5 of this bill shall become operative.

(j) Section 3.6 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 170, and SB 724. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1957 and AB 1630 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 170 and SB 724, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 170 and SB 724, at which time Section 3.6 of this bill shall become operative.

(k) Section 3.7 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1630, AB 1957, and

SB 724. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 170 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1630, AB 1957, and SB 724, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1630, AB 1957, and SB 724, at which time Section 3.7 of this bill shall become operative.

(*l*) Section 3.8 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1630, AB 170, and SB 724. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, (2) each bill amends Section 186.22 of the Penal Code, (3) AB 1957 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1630, AB 170, and SB 724, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1630, AB 170, and SB 724, at which time Section 3.8 of this bill shall become operative.

(m) Section 3.9 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1630, AB 170, and AB 1957. It shall only become operative if (1) each bill is enacted and becomes effective on or before January 1, 1994, (2) each bill amends Section 186.22 of the Penal Code, (3) SB 724 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1630, AB 170, and AB 1957, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1630, AB 170, and AB 1957, at which time Section 3.9 of this bill shall become operative.

(n) Section 3.10 of this bill incorporates amendments to Section 186.22 of the Penal Code proposed by this bill, AB 1630, AB 1957, AB 170, and SB 724. It shall only become operative if (1) all five bills are enacted and becomes effective on or before January 1, 1994, (2) all five bills amend Section 186.22 of the Penal Code, and (3) this bill is enacted after AB 1630, AB 1957, AB 170, and SB 724, in which case Section 186.22 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 1630, AB 1957, AB 170, and SB 724, at which time Section 3.10 of this bill shall become operative.

SEC. 42. Section 4.5 of this bill incorporates amendments to Section 189 of the Penal Code proposed by this bill, SB 310, and AB 852. It shall only become operative if (1) this bill and SB 310, or this bill and AB 852, or all three bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 189 of the Penal Code, and (3) this bill is enacted after SB 310 or AB 852, or both if both of those bills are enacted, in which case Section 189 of the Penal Code, as amended by Section 4 of this bill, shall remain operative only until the operative date of SB 310 or AB 852, or both SB 310 and AB 852, at which time Section 4.5 of this bill shall become operative.

SEC. 43. (a) Section 8.5 of this bill incorporates amendments to Section 653f of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 653f of the Penal Code, (3) SB 1131 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1957, in which case Section 653f of the Penal Code, as amended by Section 8 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 8.5 of this bill shall become operative.

(b) Section 8.7 of this bill incorporates amendments to Section 653f of the Penal Code proposed by both this bill and SB 1131. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 653f of the Penal Code, (3) AB 1957 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1131, in which case Sections 8, 8.5, and 8.9 of this bill shall not become operative.

(c) Section 8.9 of this bill incorporates amendments to Section 653f of the Penal Code proposed by this bill, AB 1957, and SB 1131. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 653f of the Penal Code, and (3) this bill is enacted after AB 1957 and SB 1131, in which case Section 653f of the Penal Code, as amended by Section 8 of this bill shall remain operative only until the operative date of AB 1957 and SB 1131, at which time Section 8.9 of this bill shall become operative and Sections 8, 8.5, and 8.7 of this bill shall not become operative.

SEC. 44. Section 9.5 of this bill incorporates amendments to Section 653j of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 653j of the Penal Code, and (3) this bill is enacted after AB 1957, in which case Section 653j of the Penal Code, as amended by Section 9 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 9.5 of this bill shall become operative.

SEC. 45. Section 10.5 of this bill incorporates amendments to Section 666 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 666 of the Penal Code, and (3) this bill is enacted after AB 1957, in which case Section 666 of the Penal Code, as amended by Section 10 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 10.5 of this bill shall become operative.

SEC. 46. Section 13.5 of this bill incorporates amendments to Section 667.9 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and

become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 667.9 of the Penal Code, and (3) this bill is enacted after AB 1957, in which case Section 667.9 of the Penal Code, as amended by Section 13 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 13.5 of this bill shall become operative.

SEC. 47. Section 14.5 of this bill incorporates amendments to Section 786 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 786 of the Penal Code, and (3) this bill is enacted after AB 1957, in which case Section 786 of the Penal Code, as amended by Section 14 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 14.5 of this bill shall become operative.

SEC. 48. Section 15.5 of this bill incorporates amendments to Section 868.5 of the Penal Code proposed by both this bill and SB 739. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 868.5 of the Penal Code, and (3) this bill is enacted after SB 739, in which case Section 868.5 of the Penal Code, as amended by Section 15 of this bill, shall remain operative only until the operative date of SB 739, at which time Section 15.5 of this bill shall become operative.

SEC. 49. Section 16.5 of this bill incorporates amendments to Section 999e of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 999e of the Penal Code, and (3) this bill is enacted after AB 1957, in which case Section 999e of the Penal Code, as amended by Section 16 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 16.5 of this bill shall become operative.

SEC. 50. (a) Section 17.5 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill and AB 25. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1170.1 of the Penal Code, (3) AB 41 and AB 1330 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 25, in which case Section 1170.1 of the Penal Code, as amended by Section 17 of this bill shall remain operative only until the operative date of AB 25, at which time Section 17.5 of this bill shall become operative and Sections 17, 17.7, 17.9, 17.95, 17.96, 179.97, and 17.98 of this bill shall not become operative.

(b) Section 17.7 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill and AB 1330. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative

first, (2) each bill amends Section 1170.1 of the Penal Code, (3) AB 25 and AB 41 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1330, in which case Section 1170.1 of the Penal Code, as amended by Section 17 of this bill shall remain operative until the operative date of AB 1330, at which time Section 17.7 of this bill shall become operative and Sections 17, 17.5, 17.9, 17.95, 17.96, 17.97, and 17.98 shall not become operative.

(c) Section 17.9 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill, AB 25, and AB 1330. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1170.1 of the Penal Code, (3) AB 41 is not enacted, or as enacted does not amend that section, and (4) this bill is enacted after AB 25 and AB 1330, in which case Section 1170.1 of the Penal Code, as amended by Section 17 of this bill, shall remain operative only until the operative date of AB 25 and AB 1330, at which time Section 17.9 of this bill shall become operative and Sections 17, 17.5, 17.7, 17.95, 17.96, 17.97, and 17.98 of this bill shall not become operative.

(d) Section 17.95 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill and AB 41. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1170.1 of the Penal Code, (3) AB 25 and AB 1330 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 41, in which case Section 1170.1 of the Penal Code, as amended by Section 17 of this bill shall remain operative until the operative date of AB 41, at which time Section 17.95 of this bill shall become operative and Sections 17, 17.5, 17.7, 17.9, 17.96, 17.97, and 17.98 shall not become operative.

(e) Section 17.96 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill, AB 25, and AB 41. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1170.1 of the Penal Code, (3) AB 1330 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 25 and AB 41, in which case Section 1170.1 of the Penal Code, as amended by Section 17 of this bill, shall remain operative only until the operative date of AB 25 and AB 41, at which time Section 17.96 of this bill shall become operative and Sections 17, 17.5, 17.7, 17.9, 17.95, 17.97, and 17.98 of this bill shall not become operative.

(f) Section 17.97 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill, AB 41, and AB 1330. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1170.1 of the Penal Code, (3) AB 25 is not enacted or as enacted does not amend that section,

and (4) this bill is enacted after AB 41 and AB 1330, in which case Section 1170.1 of the Penal Code, as amended by Section 17 of this bill shall remain operative until the operative date of AB 41 and AB 1330, at which time Section 17.97 of this bill shall become operative and Sections 17, 17.5, 17.7, 17.9, 17.95, 17.96, and 17.98 shall not become operative.

(g) Section 17.98 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill, AB 25, AB 41, and AB 1330. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1170.1 of the Penal Code, and (3) this bill is enacted after AB 41, AB 25, and AB 1330, in which case Section 1170.1 of the Penal Code, as amended by Section 17 of this bill, shall remain operative only until the operative date of AB 25, AB 41, and AB 1330, at which time Section 17.98 of this bill shall become operative and Sections 17, 17.5, 17.7, 17.9, 17.95, 17.96, and 17.97 of this bill shall not become operative.

SEC. 51. Section 18.5 of this bill incorporates amendments to Section 1192.7 of the Penal Code proposed by both this bill and AB 327. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1192.7 of the Penal Code, and (3) this bill is enacted after AB 327, in which case Section 1192.7 of the Penal Code, as amended by Section 18 of this bill, shall remain operative only until the operative date of AB 327, at which time Section 18.5 of this bill shall become operative.

SEC. 52. Section 19.5 of this bill incorporates amendments to Section 1202.5 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1202.5 of the Penal Code, and (3) this bill is enacted after AB 1957, in which case Section 1202.5 of the Penal Code, as amended by Section 19 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 19.5 of this bill shall become operative.

SEC. 53. (a) Section 20.3 of this bill incorporates amendments to Section 1203 of the Penal Code proposed by both this bill and AB 306. It shall only become operative if (1) both bills are enacted an become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1203 of the Penal Code, (3) AB 1957 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 306, in which case Section 1203 of the Penal Code, as amended by Section 20 of this bill, shall remain operative only until the operative date of AB 306, at which time Section 20.3 of this bill shall become operative and Sections 20, 20.5, and 20.7 of this bill shall not become operative.

(b) Section 20.5 of this bill incorporates amendments to Section 1203 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become

effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1203 of the Penal Code, (3) AB 306 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1957, in which case Section 1203 of the Penal Code, as amended by Section 20 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 20, 20.3, and 20.7 of this bill shall not become operative.

(c) Section 20.7 of this bill incorporates amendments to Section 1203 of the Penal Code proposed by this bill, AB 306, and AB 1957. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1203 of the Penal Code, and (3) this bill is enacted after AB 306 and AB 1957, in which case Section 1203 of the Penal Code, as amended by Section 20 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 20.7 of this bill shall become operative and Sections 20, 20.3, and 20.5 of this bill shall not become operative.

SEC. 54. Section 26.5 of this bill incorporates amendments to Section 1601 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1601 of the Penal Code, and (3) this bill is enacted after AB 1957, in which case Section 1601 of the Penal Code, as amended by Section 26 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 26.5 of this bill shall become operative.

SEC. 55. (a) Section 29.3 of this bill incorporates amendments to Section 12021.1 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 12021.1 of the Penal Code, (3) AB 1608 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1957, in which case Section 12021.1 of the Penal Code, as amended by Section 29 of this bill shall remain operative only until the operative date of AB 1957, at which time Section 29.3 of this bill shall become operative and Sections 29, 29.5, and 29.7 of this bill shall not become operative.

(b) Section 29.5 of this bill incorporates amendments to Section 12021.1 of the Penal Code proposed by both this bill and AB 1608. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 12021.1 of the Penal Code, (3) AB 1975 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1608, in which case Section 12021.1 of the Penal Code, as amended by Section 29 of this bill shall remain operative until the operative date of AB 1608, at which time Section 29 of this bill shall become operative and Sections 29, 29.3, and 29.7 shall not become operative.

(c) Section 29.7 of this bill incorporates amendments to Section

12021.1 of the Penal Code proposed by this bill, AB 1608, and AB 1957. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 12021.1 of the Penal Code, and (3) this bill is enacted after AB 1608 and AB 1957, in which case Section 12021.1 of the Penal Code, as amended by Section 29 of this bill, shall remain operative only until the operative date of AB 1608 and AB 1957, at which time Section 29.7 of this bill shall become operative and Sections 29, 29.3, and 29.5 of this bill shall not become operative.

SEC. 56. Section 31.5 of this bill incorporates amendments to Section 12022.5 of the Penal Code proposed by both this bill and SB 310. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 12022.5 of the Penal Code, and (3) this bill is enacted after SB 310, in which case Section 12022.5 of the Penal Code, as amended by Section 31 of this bill, shall remain operative only until the operative date of SB 310, at which time Section 31.5 of this bill shall become operative.

SEC. 57. Section 32.5 of this bill incorporates amendments to Section 13853 of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 13853 of the Penal Code, and (3) this bill is enacted after AB 1957, in which case Section 13853 of the Penal Code, as amended by Section 32 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 32.5 of this bill shall become operative.

SEC. 58. Section 35.5 of this bill incorporates amendments to Section 4514 of the Welfare and Institutions Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 4514 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1957, in which case Section 4514 of the Welfare and Institutions Code, as amended by Section 35 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 35.5 of this bill shall become operative.

SEC. 59. Section 36.5 of this bill incorporates amendments to Section 5328.4 of the Welfare and Institutions Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 5328.4 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1957, in which case Section 5328.4 of the Welfare and Institutions Code, as amended by Section 36 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 36.5 of this bill shall become operative.

SEC. 60. Section 37.5 of this bill incorporates amendments to Section 6500 of the Welfare and Institutions Code proposed by both

this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 6500 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1957, in which case Section 6500 of the Welfare and Institutions Code, as amended by Section 37 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 37.5 of this bill shall become operative.

SEC. 61. Section 38.5 of this bill incorporates amendments to Section 8103 of the Welfare and Institutions Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 8103 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1957, in which case Section 8103 of the Welfare and Institutions Code, as amended by Section 38 of this bill, shall remain operative only until the operative date of AB 1957, at which time Section 38.5 of this bill shall become operative.

SEC. 63. This bill shall become operative only if Assembly Bill 6 of the 1993–94 Regular Session is enacted and becomes effective on or before January 1, 1994.

SEC. 64. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 65. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the people of this state from the extreme danger posed by an increasing number of carjackings and to provide a level of punishment sufficient to deter the commission of these violent crimes, it is necessary that this act take effect immediately.

CHAPTER 612

An act to amend Sections 12021 and 12021.1 of the Penal Code, relating to firearms.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 136.5, 140, 171b, 171c, 171d, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 417, 417.2, 626.9, subdivision (b) or (d) of Section 12034, subdivision (a) of Section 12100, 12320, or 12590 and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2).

(2) Any person who is subject to the prohibition imposed by this subdivision because of a conviction prior to January 1, 1991, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the

clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) of this section or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(3) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2), shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or an offense described in subdivision (b) of Section 1203.073, (2) is found to be a fit and proper subject to be dealt with under the juvenile court law, and (3) is subsequently adjudged a ward of the

juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or an offense described in subdivision (b) of Section 1203.073 shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a protective order defined in Section 6218 of the Family Code, is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code. However, this subdivision does not apply if the firearm is received as part of the disposition of community property pursuant to Division 7 (commencing with Section 2500) of the Family Code.

SEC. 2. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any

firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 136.5, 140, 171b, 171c, 171d, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.2, 626.9, 646.9, subdivision (b) or (d) of Section 12034, subdivision (a) of Section 12100, 12320, or 12590 and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under subdivision (c) no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant

evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction prior to January 1, 1991, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3), shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person

or entity from any other liability that might otherwise be imposed.

(d) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or an offense described in subdivision (b) of Section 1203.073, (2) is found to be a fit and proper subject to be dealt with under the juvenile court law, and (3) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or an offense described in subdivision (b) of Section 1203.073 shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

(g) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a protective order as defined in Section 6218 of the Family Code, is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against

whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code. However, this subdivision does not apply if the firearm is received as part of the disposition of community property pursuant to Division 7 (commencing with Section 2500) of the Family Code.

SEC. 3. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any attempt to commit a crime listed in this subdivision other than an assault.

(26) Any offense enumerated in subdivision (a), (b), or (d) of Section 12001.6.

(27) Any offense enumerated in subdivision (c) of Section 12001.6 if the person has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 4. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.
(2) Mayhem.
(3) Rape.
(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.
(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.
(6) Lewd acts on a child under the age of 14 years.
(7) Any felony punishable by death or imprisonment in the state prison for life.
(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.
(9) Attempted murder.
(10) Assault with intent to commit rape or robbery.
(11) Assault with a deadly weapon or instrument on a peace officer.
(12) Assault by a life prisoner on a noninmate.
(13) Assault with a deadly weapon by an inmate.
(14) Arson.
(15) Exploding a destructive device or any explosive with intent to injure.
(16) Exploding a destructive device or any explosive causing great bodily injury.
(17) Exploding a destructive device or any explosive with intent to murder.
(18) Robbery.
(19) Kidnapping.
(20) Taking of a hostage by an inmate of a state prison.
(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.
(22) Any felony in which the defendant personally used a dangerous or deadly weapon.
(23) Escape from a state prison by use of force or violence.
(24) Assault with a deadly weapon or force likely to produce great bodily injury.
(25) Any attempt to commit a crime listed in this subdivision other than an assault.
(26) Any offense enumerated in subdivision (a), (b), or (d) of Section 12001.6.
(27) Any offense enumerated in subdivision (c) of Section 12001.6 if the person has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417.
(28) Premises invasion of the first degree.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who

owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 5. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any felony violation of Section 186.22.

(26) Any attempt to commit a crime listed in this subdivision other than an assault.

(27) Any offense enumerated in subdivision (a), (b), or (d) of Section 12001.6.

(28) Any offense enumerated in subdivision (c) of Section 12001.6 if the person has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 6. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a

involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any attempt to commit a crime listed in this subdivision other than an assault.

(26) Any offense enumerated in subdivision (a), (b), or (d) of Section 12001.6.

(27) Carjacking.

(28) Any offense enumerated in subdivision (c) of Section 12001.6 if the person has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 7. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any felony violation of Section 186.22.

(26) Any attempt to commit a crime listed in this subdivision other than an assault.

(27) Any offense enumerated in subdivision (a), (b), or (d) of Section 12001.6.

(28) Any offense enumerated in subdivision (c) of Section 12001.6 if the person has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417.

(29) Premises invasion of the first degree.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes

the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 8. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any attempt to commit a crime listed in this subdivision other than an assault.

(26) Any offense enumerated in subdivision (a), (b), or (d) of Section 12001.6.

(27) Carjacking.

(28) Any offense enumerated in subdivision (c) of Section 12001.6 if the person has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417.

(29) Premises invasion of the first degree.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 9. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any felony violation of Section 186.22.

(26) Any attempt to commit a crime listed in this subdivision other than an assault.

(27) Any offense enumerated in subdivision (a), (b), or (d) of Section 12001.6.

(28) Carjacking.

(29) Any offense enumerated in subdivision (c) of Section 12001.6 if the person has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at

least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 10. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any felony violation of Section 186.22.

(26) Any attempt to commit a crime listed in this subdivision other than an assault.

(27) Any offense enumerated in subdivision (a), (b), or (d) of Section 12001.6.

(28) Carjacking.

(29) Any offense enumerated in subdivision (c) of Section 12001.6 if the person has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417.

(30) Premises invasion of the first degree.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 11. Section 2 of this bill incorporates amendments to Section 12021 of the Penal Code proposed by both this bill and AB 242. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 12021 of the Penal Code, and (3) this bill is enacted after AB 242, in which case Section 1 of this bill shall not become operative.

SEC. 12. Section 4 of this bill incorporates amendments to Section 12021.1 of the Penal Code proposed by both this bill and AB 1957. It

shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 12021.1 of the Penal Code, and (3) this bill is enacted after AB 1957, in which case Sections 3, 5, 6, 7, 8, 9, and 10 of this bill shall not become operative.

SEC. 13. Section 5 of this bill incorporates amendments to Section 12021.1 of the Penal Code proposed by both this bill and AB 1608. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 12021.1 of the Penal Code, and (3) this bill is enacted after AB 1608, in which case Sections 3, 4, 6, 7, 8, 9, and 10 of this bill shall not become operative.

SEC. 14. Section 6 of this bill incorporates amendments to Section 12021.1 of the Penal Code proposed by this bill and SB 60. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 12021.1 of the Penal Code, and (3) this bill is enacted after SB 60, in which case Section 12021.1 of the Penal Code, as amended by SB 60, shall remain operative only until the operative date of this bill, at which time Section 6 of this bill shall become operative, and Sections 3, 4, 5, 7, 8, 9, and 10 of this bill shall not become operative.

SEC. 15. Section 7 of this bill incorporates amendments to Section 12021.1 of the Penal Code proposed by this bill, AB 1608, and AB 1957. It shall only become operative if (1) all three bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 12021.1 of the Penal Code, and (3) this bill is enacted after AB 1608 and AB 1957, in which case Sections 3, 4, 5, 6, 8, 9, and 10 of this bill shall not become operative.

SEC. 16. Section 8 of this bill incorporates amendments to Section 12021.1 of the Penal Code proposed by this bill, AB 1957, and SB 60. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 12021.1 of the Penal Code, and (3) this bill is enacted after AB 1957 and SB 60, in which case Section 12021.1 of the Penal Code, as amended by SB 60, shall remain operative only until the operative date of this bill, at which time Section 8 of this bill shall become operative, and Sections 3, 4, 5, 6, 7, 9, and 10 of this bill shall not become operative.

SEC. 17. Section 9 of this bill incorporates amendments to Section 12021.1 of the Penal Code proposed by this bill, AB 1608, and SB 60. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 12021.1 of the Penal Code, and (3) this bill is enacted after AB 1608 and SB 60, in which case Section 12021.1 of the Penal Code, as amended by SB 60, shall remain operative only until the operative date of this bill, at which time Section 9 of this bill shall become operative, and Sections 3, 4, 5, 6, 7, 8, and 10 of this bill shall not become operative.

SEC. 18. Section 10 of this bill incorporates amendments to

Section 12021.1 of the Penal Code proposed by this bill, AB 1608, AB 1957, and SB 60. It shall only become operative if (1) all of these bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 12021.1 of the Penal Code, and (3) this bill is enacted after AB 1608, AB 1957, and SB 60, in which case Section 12021.1 of the Penal Code, as amended by SB 60, shall remain operative only until the operative date of this bill, at which time Section 10 of this bill shall become operative, and Sections 3, 4, 5, 6, 7, 8, and 9 of this bill shall not become operative.

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 613

An act to amend Section 8650.1 of the Streets and Highways Code, relating to bonds.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 8650.1 of the Streets and Highways Code is amended to read:

8650.1. The legislative body, in its discretion, may determine, either (a) in the resolution of intention describing the improvement work, or (b) thereafter in any change proceedings taken under and in accordance with the provisions of the same act under which the resolution of intention was adopted, that the principal amount of the bonds maturing or becoming subject to mandatory prior redemption each year shall be other than an amount equal to an even annual proportion of the aggregate principal of the bonds, and it may determine that the amount of principal maturing or becoming subject to mandatory prior redemption in each year plus the amount of interest payable in that year will be an aggregate amount that is substantially equal each year, except for the moneys falling due on the first maturity or mandatory prior redemption date of the bonds which shall be adjusted to reflect the amount of interest earned from the date when the bonds bear interest to the date when the first interest is payable on the bonds. Notwithstanding Section 8651.5, to

the extent that the determination to issue bonds pursuant to Section 8570 includes term bonds, the legislative body shall provide for mandatory prior redemption of those bonds, without premium, through annual sinking fund installments conforming to the requirements of this section.

Notwithstanding Section 8652, the legislative body may prescribe the form of the bonds and shall fix the date of the bonds. The legislative body may divide the principal amount of any issue into two or more divisions and fix different dates for the payment of bonds of each division. The bonds of one division may be made payable at different times than bonds of any other division.

The legislative body, in its discretion, may determine in like manner to classify assessments into different terms of maturity so that smaller assessments may be made to mature over a shorter period of time and, in that event, the bond declaration in the resolution of intention, or in the change proceedings taken under and in accordance with the provisions of the same act under which the resolution of intention was adopted, in the assessment, and in the notice of recording the assessment may recite that the last installment of bonds shall mature a maximum rather than an exact number of years from the second day of September next succeeding 12 months from their date.

CHAPTER 614

An act to amend Sections 22651 and 22655.5 of, and to add Section 22850.5 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 22651 of the Vehicle Code is amended to read:

22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city or a county in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to any subdivision of this section, and it is known to have been issued five or more notices of parking violation over a period of five or more days, to which the owner or person in control of the vehicle has not responded to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located and satisfactory evidence that all parking penalties due for the vehicle and all traffic violations of the registered owner have been cleared, or both. A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of requiring satisfactory evidence that the parking penalties and failures to appear have been satisfied, the impounding law enforcement agency may, in its discretion, issue a notice to appear for the offenses

charged, as provided in Article 2 (commencing with Section 40500) of Chapter 2 of Division 17. In lieu of either furnishing satisfactory evidence that the bail has been deposited or accepting the notice to appear, that person may demand to be taken without unnecessary delay before a magistrate within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded or a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(2) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5.

(3) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (2) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(j) When any vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When any vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(*l*) When any vehicle is illegally parked on a highway in violation

of any local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(m) Wherever the use of the highway, or any portion thereof, is authorized by local authorities for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of any vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(n) Whenever any vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. No vehicle may be removed unless signs are posted giving notice of the removal.

(o) (1) When any vehicle is found upon a highway, any public lands, or an offstreet parking facility with a registration expiration date in excess of one year before the date it is found on the highway, public lands, or the offstreet parking facility. However, if the vehicle is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle. For purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(2) As used in this subdivision, "offstreet parking facility" means any offstreet facility held open for use by the public for parking vehicles and includes any publicly owned facilities for offstreet parking, and privately owned facilities for offstreet parking where no fee is charged for the privilege to park and which are held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, or 14601.5 and there is no passenger in the vehicle who has a valid driver's license and authorization to operate the vehicle. Any vehicle so removed from the highway or any public lands shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever any vehicle is parked for more than 24 hours on a portion of highway which is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing

notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When any vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When any vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle which is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or view point.

(2) For purposes of this subdivision, a roadside rest area or view point is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

SEC. 1.5. Section 22561 of the Vehicle Code is amended to read:

22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city or a county in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a

highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to this code, and it is known to have been issued five or more notices of parking violation, to which the owner or person in control of the vehicle has not responded within 21 days of citation issuance or 10 days of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and other vehicle registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5 less the amount received from the sale of the vehicle.

(j) When any vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When any vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(*l*) When any vehicle is illegally parked on a highway in violation of any local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(m) Wherever the use of the highway, or any portion thereof, is authorized by local authorities for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of any vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the

ordinance.

(n) Whenever any vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. No vehicle may be removed unless signs are posted giving notice of the removal.

(o) (1) When any vehicle is found upon a highway, any public lands, or an offstreet parking facility with a registration expiration date in excess of one year before the date it is found on the highway, public lands, or the offstreet parking facility. However, if the vehicle is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle. For purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(2) As used in this subdivision, "offstreet parking facility" means any offstreet facility held open for use by the public for parking vehicles and includes any publicly owned facilities for offstreet parking, and privately owned facilities for offstreet parking where no fee is charged for the privilege to park and which are held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, or 14601.5 and there is no passenger in the vehicle who has a valid driver's license and authorization to operate the vehicle. Any vehicle so removed from the highway or any public lands shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever any vehicle is parked for more than 24 hours on a portion of highway which is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When any vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When any vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle which is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or view point.

(2) For purposes of this subdivision, a roadside rest area or view point is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to

enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

SEC. 2. Section 22655.5 of the Vehicle Code is amended to read:

22655.5. A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove a motor vehicle from the highway or from public or private property within the territorial limits in which the officer may act under the following circumstances:

(a) When any vehicle is found upon a highway or public or private property and a peace officer has probable cause to believe that the vehicle was used as the means of committing a public offense.

(b) When any vehicle is found upon a highway or public or private property and a peace officer has probable cause to believe that the vehicle is itself evidence which tends to show that a crime has been committed or that the vehicle contains evidence, which cannot readily be removed, which tends to show that a crime has been committed.

(c) Notwithstanding Section 3068 of the Civil Code or Section 22851 of this code, no lien shall attach to a vehicle removed under this section unless the vehicle was used by the alleged perpetrator of the crime with the express or implied permission of the owner of the vehicle.

(d) In any prosecution of the crime for which a vehicle was impounded pursuant to this section, the prosecutor may request, and the court may order, the perpetrator of the crime, if convicted, to pay the costs of towing and storage of the vehicle, and any local administrative charges imposed pursuant to Section 22850.5.

(e) This section shall become operative on January 1, 1993.

SEC. 3. Section 22850.5 is added to the Vehicle Code, to read:

22850.5. (a) A city, county, or city and county may adopt an ordinance or resolution establishing procedures for the release of properly impounded vehicles and for the imposition of a charge equal to its administrative costs relating to the removal, impound, storage, or release of the vehicles. Those administrative costs may be waived by the local authority upon verifiable proof that the vehicle was reported stolen at the time the vehicle was removed.

(b) Administrative costs shall only be imposed on the registered owner or the agents of that owner and shall not include any vehicle towed under an abatement program or sold at a lien sale pursuant to Sections 3068.1 to 3074, inclusive, of, and Section 22851 of, the Civil Code unless the sale is sufficient in amount to pay the lienholder's total charges and proper administrative costs.

(c) Any administrative costs imposed shall be collected by the local authority at the time of release.

(d) The local administration charges imposed pursuant to this section shall be in addition to any other charges authorized or imposed pursuant to this code.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 22651 of the Vehicle Code proposed by both this bill and AB 780. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 22651 of the Vehicle Code, and (3) this bill is enacted after AB 780, in which case Section 1 of this bill shall not become operative.

CHAPTER 615

An act to amend Section 1241 of the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1241 of the Insurance Code is amended to read:

1241. In addition to the permission granted by Section 1240, an insurer, whether or not it is authorized to do business in, or has outstanding insurance contracts on lives or risks in any foreign country, may invest in or otherwise acquire or loan upon securities and investments in that foreign country which are substantially of the same kinds, classes and investment grades as those eligible for investment under this code, subject to the following conditions:

(a) Such investments shall not exceed in the aggregate 4 percent of the capital and surplus or 2 percent of the total admitted assets of such insurer, whichever is less.

(b) Notwithstanding subdivision (a), for an insurer having admitted assets of not less than one hundred million dollars ($100,000,000) as of the December 31, preceding, the investment shall not exceed in the aggregate 4 percent of the total admitted assets of the insurer as of the preceding December 31. Those insurers shall also comply with all other applicable state and federal laws relating to loans and investments.

(c) Such investments are to be classified as excess investments.

(d) Only those of such investments as are listed and traded on a securities exchange subject to regulation, supervision, or control under a statute of the United States of America, or if such securities shall be subject to an annual evaluation by the National Association of Insurance Commissioners' Evaluation Committee, shall be allowed as admitted assets. The expense of an evaluation by such committee shall be borne by the insurer making such investments.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into

immediate effect. The facts constituting the necessity are:

In order to address certain critical insurance legislation at the earliest possible time it is necessary that this act take effect immediately.

CHAPTER 616

An act to amend Sections 1192.7, 1211.5, 1241, and 10103 of the Insurance Code, relating to insurance.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1192.7 of the Insurance Code is amended to read:

1192.7. (a) A domestic insurer having admitted assets aggregating in value not less than one hundred million dollars ($100,000,000) may make excess funds investments in participation certificates (1) which represent an undivided interest in an interest-bearing obligation issued by a corporation and (2) for which a resale market exists at the time the investment is made.

(b) No investment in a participation certificate may be made pursuant to this section unless the entire obligation is a form of investment which the insurer would be authorized to acquire pursuant to subdivision (a) of Section 1192.

(c) An investment may not be made under the authority of this section if at the time of making the investment it would result in the insurer then owning participation certificates described in this section in an amount exceeding 4 percent of the insurer's admitted assets as determined by the insurer's last preceding annual statement filed with the commissioner.

SEC. 2. Section 1211.5 of the Insurance Code is amended to read:

1211.5. Any domestic incorporated insurer having admitted assets as of the preceding December 31, of at least one billion dollars ($1,000,000,000), after investing an amount equal to its required minimum paid-in capital in securities specified in Article 3 (commencing with Section 1170), may invest in, for purposes of bona fide hedging transactions, the purchase and sale of exchange traded options on stock indices, stock index futures contracts, or options on stock index futures contracts, pursuant to this section.

(a) With respect to existing common stocks owned by it, the insurer may, for purposes of hedging, buy put options or sell call options on the Standard and Poors 500 Index, the Standard and Poors 100 Index, or any other index approved by the commissioner; and sell stock index futures contracts on the Standard and Poors 500 Index or any other index approved by the commissioner. The insurer may sell

put options on those indices or buy stock index futures contracts pursuant to this subdivision only for the purpose of a closing transaction. All transactions authorized herein shall be made through an exchange.

(b) With respect to anticipated common stock positions, the insurer may, for purposes of hedging, buy call options on the Standard and Poors 500 Index, the Standard and Poors 100 Index, or any other index approved by the commissioner; and buy stock index futures contracts on the Standard and Poors 500 Index. Except with the prior approval of the commissioner, an investment shall not be made under the authority of this subdivision if, at the time of its making, the investment would result in the insurer hedging anticipated common stock positions in an amount exceeding 5 percent of admitted assets. The insurer may sell call options on those indices or sell stock index futures contracts pursuant to this subdivision and only for the purpose of a closing transaction. All transactions authorized herein shall be made through an exchange.

(c) The investments in bona fide hedging transactions set forth in subdivisions (a) and (b) shall not be made, unless upon execution, the option or contract is specifically identified with existing common stocks as authorized in subdivision (a) or anticipated common stock positions as authorized in subdivision (b), and the option or contract has a positive correlation (prices tend to move in the same direction with a reasonably similar magnitude) with the identified common stocks or anticipated common stock positions.

(d) An insurer shall not engage in bona fide hedging transactions and positions in options on stock indices, stock index futures contracts, or options on stock index futures contracts except pursuant to this section.

(e) A request to the commissioner to invest in, for hedging purposes, an option on a stock index, stock index futures contract, or option, on a stock index futures contract not specifically set forth in subdivision (a) or (b) shall be in writing and shall be accompanied by any supporting data and documentation that the commissioner may require. The commissioner shall require the payment of a five thousand dollar ($5,000) fee for the determination of whether to approve or disapprove that request. A request to exceed the 5-percent limitation set forth in subdivision (b) shall be in writing and shall be deemed approved unless the commissioner disapproves it within 60 days after the request has been filed in the commissioner's office. The commissioner shall require the payment of a one thousand dollar ($1,000) fee for the determination of whether to approve or disapprove the request to exceed the limitation.

(f) Investments made pursuant to this section shall be subject to the provisions of Sections 1153.5, 1154, 1200, 1201, and 1202 as if they were excess fund investments.

(g) The commissioner may adopt rules and guidelines establishing standards and requirements relative to practices

authorized in this section.

SEC. 3. Section 1241 of the Insurance Code is amended to read:

1241. In addition to the permission granted by Section 1240, an insurer, whether or not it is authorized to do business in, or has outstanding insurance contracts on lives or risks in any foreign country, may invest in or otherwise acquire or loan upon securities and investments in that foreign country which are substantially of the same kinds, classes and investment grades as those eligible for investment under this code, subject to the following conditions:

(a) Such investments shall not exceed in the aggregate 4 percent of the capital and surplus or 2 percent of the total admitted assets of such insurer, whichever is less.

(b) Notwithstanding subdivision (a), for an insurer having admitted assets of not less than one hundred million dollars ($100,000,000) as of the December 31, preceding, the investment shall not exceed in the aggregate 4 percent of the total admitted assets of the insurer as of the preceding December 31. Those insurers shall also comply with all other applicable state and federal laws relating to loans and investments.

(c) Such investments are to be classified as excess investments.

(d) Only those of such investments as are listed and traded on a securities exchange subject to regulation, supervision, or control under a statute of the United States of America, or if such securities shall be subject to an annual evaluation by the National Association of Insurance Commissioners' Evaluation Committee, shall be allowed as admitted assets. The expense of an evaluation by such committee shall be borne by the insurer making such investments.

SEC. 4. Section 10103 of the Insurance Code is amended to read:

10103. (a) No policy of residential property insurance may be issued or renewed in this state unless it indicates on the declarations page of the policy or, if space does not permit, on a separate disclosure form attached to the declarations page:

(1) Limits of liability for the structure.

(2) Limits of liability for personal property.

(3) Deductibles.

(4) Whether the policy provides coverage for the increased costs of repairing or replacing damage to the insured dwelling caused by a covered loss because of building ordinances or laws regulating the repair. In the event that no coverage is provided for repairs that result from new building ordinances or laws, the insurer shall include in no less than 10-point typeface the following statement: "THIS POLICY DOES NOT INCLUDE BUILDING CODE UPGRADE COVERAGE."

(b) In the event that the policy does include code upgrade coverage, it shall either:

(1) State this on the declaration page, and denote any applicable limits.

(2) State this on a separate disclosure form attached to the declarations page, if the separate disclosure form meets the following

standards:

(A) It is printed in not less than 10-point typeface.

(B) It denotes any applicable limits on the amount of coverage.

(C) It denotes restrictions, if any, on coverage for compliance with applicable building codes which take effect after the date of loss but prior to the issuance of required building permits.

CHAPTER 617

An act to amend Sections 1068, 2762, 8033.1, 8043, 8046.1, 8051.2, 8140, and 8280 of, to amend and repeal Section 8051.1 of, to amend, repeal, and add Section 8047 of, to add Sections 8033.2, 8150.9, 8280.5, and 8399.1 to, and to repeal Section 2273 of, the Fish and Game Code, relating to commercial fishing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1068 of the Fish and Game Code is amended to read:

1068. (a) Beginning November 1, 1991, the director shall make a grant in installments to a nonprofit organization of sea urchin divers in an amount not to exceed four hundred thousand dollars ($400,000), for the organization to accomplish the following purposes:

(1) To establish a communications network among sea urchin divers, through a newsletter and such other means as are deemed necessary and appropriate by the organization, providing divers with information on policies, procedures, statutes, and regulations affecting the sea urchin fishery, meeting announcements, and for other information the department reasonably requests to be transmitted to sea urchin divers.

(2) To establish an education program on the conservation and utilization of sea urchins.

(3) To convene statewide conferences for members of the industry to meet for purposes of strengthening the industry and benefiting industry goals.

The grant shall be paid, upon submission and approval of an annual budget, in quarterly installments, in amounts deemed appropriate by the department, upon the submission to the department of progress reports which demonstrate the continued achievements of the organization toward the intended goals.

(b) Prior to making the grant, the director shall verify from the nonprofit organization's bylaws that it is established for, among other purposes, the protection, conservation, enhancement, and

promotion of the sea urchin fishery, and that its membership, including its board of directors, is composed solely of licensed commercial sea urchin divers.

(c) The grant shall be funded from revenues received pursuant to subdivision (b) of Section 8051.1 until March 1, 1996. The department shall estimate the revenues to be received pursuant to subdivision (b) of Section 8051.1 on a quarterly basis. If the department determines that the revenue to be received will not be sufficient to fund the amount of the grant, including departmental overhead charges, which shall be recovered in full, the department shall reduce the amount of the grant accordingly.

(d) The revenue received pursuant to subdivision (b) of Section 8051.1 shall first be used to reimburse the department for departmental overhead charges incurred in administering the grant.

SEC. 2. Section 2273 of the Fish and Game Code is repealed.

SEC. 3. Section 2762 of the Fish and Game Code is amended to read:

2762. (a) The Fisheries Restoration Account is hereby created in the Fish and Game Preservation Fund. The moneys in the Fisheries Restoration Account are hereby appropriated to the department for expenditure in fiscal years 1991–92 to 1993–94, inclusive, pursuant to subdivision (b).

(b) The moneys in the Fisheries Restoration Account may be expended for the construction, operation, and administration of projects designated in the plan developed by the department in accordance with the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act (Ch. 8 (commencing with Sec. 6900), Pt. 1, Div. 6), and projects designed to restore and maintain fishery resources and their habitat that have been damaged by past water diversions and projects and other development activities. Expenditures shall not be authorized for a project to be funded under this subdivision before a date which is 30 days after the department has furnished a copy of the proposal for the project to be funded, together with supporting descriptions, to the Joint Committee on Fisheries and Aquaculture and to the Joint Legislative Budget Committee. These projects shall have as their primary objective the restoration of fishery resources identified in the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act. Projects may include, but shall not be limited to, watershed assessments, fisheries restoration planning, acquisition of lands, restoration of habitat, restoration or creation of spawning areas, construction of fish screens or fish ladders, stream rehabilitation, and installation of pollution control facilities. Projects for restoration or creation of spawning areas shall utilize natural spawning rather than hatcheries to the extent possible.

Under no circumstances shall any water project be absolved under this subdivision of any mitigation requirements which are placed upon it under existing law.

No land shall be acquired pursuant to this chapter by eminent

domain proceedings.

(c) Priority for funding shall be given to projects that employ fishermen, fish processing workers, and others who are unemployed or underemployed due to the elimination of a commercial fishing season as a result of restrictions imposed by federal regulations. This priority shall remain in effect only as long as those restrictions are in force.

(d) Expenditures shall not be authorized for multiyear projects funded under subdivision (b) before a date which is 30 days after the department has submitted an annual progress report on the project and a copy of the work schedule for subsequent year funding of the project to the Joint Committee on Fisheries and Aquaculture and to the Joint Legislative Budget Committee.

(e) The department shall conduct a preproject and postproject evaluation on each project recommended in the plan and program developed by the department in accordance with the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act for which money has been appropriated from the Fisheries Restoration Account.

(f) The department may expend not more than 5 percent of the funds annually appropriated from the Fisheries Restoration Account for the administration of projects.

(g) The department may contract for services for the purpose of conducting a preproject and postproject evaluation or for the administration of projects.

(h) The department shall, during the last fiscal year of funding, conduct a review of all previous and ongoing projects to determine if the elements of the plan and program developed by the department pursuant to the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act are being met, including the goal of doubling the 1988 population of salmon and steelhead trout, as declared in Section 6902.

SEC. 4. Section 8033.1 of the Fish and Game Code is amended to read:

8033.1. (a) Any person engaged in any of the following activities involving species identified in subdivision (b) of Section 8597 shall obtain a nontransferable marine aquaria receiver's license:

(1) A person who is required to have a marine aquaria collector's permit pursuant to Section 8597 who sells live marine organisms indigenous to California, that the person has taken, to the ultimate consumer.

(2) A person who purchases or receives live marine species indigenous to California for commercial purposes from any of the following:

(A) A fisherman who is required to have a marine aquaria collector's permit pursuant to subdivision (a) of Section 8597.

(B) A person who imports from neighboring states species that are also indigenous to California waters.

(b) A person required to be licensed as a marine aquaria receiver

shall obtain all live marine organisms indigenous to California waters only from fishermen, aquaculturists, or importers holding current and appropriate licenses or permits.

SEC. 5. Section 8033.2 is added to the Fish and Game Code, to read:

8033.2. The annual fee for the marine aquaria receiver's license shall be established by the department in an amount determined to be sufficient to pay the costs of administration and enforcement of Section 8033.1, Section 8043.1, and Article 19 (commencing with Section 8596) of Chapter 2. The fee shall be established in an amount not less than five hundred dollars ($500) or more than one thousand dollars ($1,000).

SEC. 6. Section 8043 of the Fish and Game Code is amended to read:

8043. (a) Every commercial fisherman who sells or delivers fish that he or she has taken to any person who is not licensed under Article 7 (commencing with Section 8030), and every person who is required to be licensed under Article 7 (commencing with Section 8030) to conduct the activities of a fish receiver, as described in Section 8033, shall make a legible record in the form of a landing receipt on forms to be furnished by the department.

(b) The landing receipt shall show all of the following:

(1) The weight of the species of fish received, as designated pursuant to Section 8045. Sablefish may be reported in dressed weight, and if so reported, shall have the round weights computed, for purposes of management quotas, by multiplying 1.6 times the reported dressed weight.

(2) The name of the fisherman.

(3) The department registration number of the boat.

(4) The name of the recipient.

(5) The date of receipt.

(6) The price paid.

(7) The department origin block number where the fish were caught.

(8) The type of gear used.

(9) Any other information as the department may prescribe.

SEC. 7. Section 8046.1 of the Fish and Game Code is amended to read:

8046.1. (a) In addition to the requirements of Section 8046, any person landing groundfish subject to federal groundfish regulations adopted pursuant to the Magnuson Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et seq.) shall keep a copy of the landing receipt on board the fishing vessel for a period of 30 days following the date of landing.

(b) This section shall become inoperative on April 1, 1995, and, as of January 1, 1996, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1996, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. Section 8047 of the Fish and Game Code is amended to

read:

8047. (a) A person licensed under Article 7 (commencing with Section 8030) who takes his or her own fish shall make a legible record in the form of the landing receipt as required by Sections 8043 and 8043.1 at the time the fish are brought ashore. The original signed copy of the landing receipt shall be delivered by the licensee to the department on or before the first and 16th day of each month. A copy of the landing receipt shall be retained by the licensee for a period of four years and shall be available for inspection at any time within that period by the department. A copy of the landing receipt shall be delivered to an agent authorized in writing by the majority of the persons who participated in the taking of the fish, excluding the commercial fisherman receiving the original copy.

(b) Every commercial fisherman who sells fish taken from the waters of this state or brought into this state in fresh condition to persons not licensed to receive fish for commercial purposes pursuant to Article 7 (commencing with Section 8030) shall make a legible record in the form of the landing receipt required by Sections 8043 and 8043.1. Persons subject to Section 8043 shall remit the landing tax imposed by Section 8041. The person taking, purchasing, or receiving the fish, whether or not licensed under Article 7 (commencing with Section 8030), shall sign the landing receipt. The original signed copy of the landing receipt shall be delivered by the commercial fisherman to the department on or before the first and 16th day of each month. A copy of the landing receipt shall be retained by the commercial fisherman for a period of four years and shall be available for inspection at any time within that period by the department. A copy of the landing receipt shall be retained by the person taking, purchasing, or receiving the fish until they are prepared for consumption or otherwise disposed of. A copy of the landing receipt shall be delivered to an agent authorized in writing by the majority of the persons who participated in the taking of the fish, excluding the commercial fisherman receiving the original copy.

(c) (1) Except as provided in subdivision (d), every commercial fisherman or his or her designee, who transports, causes to be transported, or delivers to another person for transportation, any fish, except herring, taken from the waters of this state or brought into this state in fresh condition, shall fill out a transportation receipt on forms provided by the department at the time the fish are brought ashore.

(2) The name of the person transporting the fish shall be entered on the transportation receipt.

(3) The original signed copy of the transportation receipt shall be delivered by the commercial fisherman to the department on or before the first and 16th day of each month. A copy of the transportation receipt shall be retained by the commercial fisherman who filled it out for a period of four years and shall be available for inspection at any time within that period by the department. A copy

of the transportation receipt shall be given to and retained by the person transporting the fish until the fish are sold fresh, processed, or otherwise disposed of.

(4) The transportation receipt is required only for transit purposes.

(5) A person transporting fish from the point of first landing under a transportation receipt is not required to be licensed to conduct the activities of a fish receiver as described in Section 8033.

(d) Groundfish transportation receipts may periodically be issued by the department to licensed fish receivers to transport groundfish taken with a trawl net, subject to federal groundfish regulations, that require transporting to a separate location for weighing, excluding ice, and purchasing of the catch. Licensed fish receivers may use groundfish transportation receipts subject to the following terms and conditions:

(1) The gross weight of each load, by species, and other information specified by the department, shall be accurately recorded on the groundfish transportation receipt at the time the fish are received at the place of landing.

(2) A completed copy of the groundfish transportation receipt shall be delivered to the commercial fisherman or his or her designee at the time the load is received at the place of landing. The commercial fisherman shall retain a copy of the groundfish transportation receipt for four years during which time it shall be available for inspection by the department.

(3) Each container of federally regulated groundfish, covered under a groundfish transportation receipt, shall be labeled throughout the loading, unloading, and transportation process with the vessel name, date brought ashore, and weight of the load.

(4) The commercial fisherman shall retain a copy of the groundfish transportation receipt on the vessel, in lieu of the landing receipt, and the retention of the receipt shall be deemed to constitute compliance with subdivision (a) of Section 8046.1.

(5) The fish landing receipt shall be completed within 48 hours of the completion of the groundfish transportation receipt.

(6) Not more than 10 percent loss of weight in the load shall be permitted between the weight recorded on the groundfish transportation receipt and the weight recorded on the fish landing receipt.

(7) The commercial fisherman or his or her designee shall be provided a copy of the fish landing receipt within 72 hours of the completion of the groundfish transportation receipt. The fish landing receipt shall be retained as required under Sections 8046 and 8046.1.

(8) If fish are transported under the authority of a groundfish transportation receipt issued pursuant to this section, the fish receiver shall attach the department's copy of the groundfish transportation receipt to the department's copy of the fish landing receipt and submit those receipts to the department on the first and sixteenth of each month.

(e) This section shall become inoperative on April 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 9. Section 8047 is added to the Fish and Game Code, to read:

8047. (a) A person licensed under Article 7 (commencing with Section 8030) who takes his or her own fish shall make a legible record in the form of the landing receipt as required by Sections 8043 and 8043.1 at the time the fish are brought ashore. The original signed copy of the landing receipt shall be delivered by the licensee to the department on or before the first and 16th day of each month. A copy of the landing receipt shall be retained by the licensee for a period of four years and shall be available for inspection at any time within that period by the department. A copy of the landing receipt shall be delivered to an agent authorized in writing by the majority of the persons who participated in the taking of the fish, excluding the commercial fisherman receiving the original copy.

(b) Every commercial fisherman who sells fish taken from the waters of this state or brought into this state in fresh condition to persons not licensed to receive fish for commercial purposes pursuant to Article 7 (commencing with Section 8030) shall make a legible record in the form of the landing receipt required by Sections 8043 and 8043.1. Persons subject to Section 8043 shall remit the landing tax imposed by Section 8041. The person taking, purchasing, or receiving the fish, whether or not licensed under Article 7 (commencing with Section 8030), shall sign the landing receipt. The original signed copy of the landing receipt shall be delivered by the commercial fisherman to the department on or before the first and 16th day of each month. A copy of the landing receipt shall be retained by the commercial fisherman for a period of four years and shall be available for inspection at any time within that period by the department. A copy of the landing receipt shall be retained by the person taking, purchasing, or receiving the fish until they are prepared for consumption or otherwise disposed of. A copy of the landing receipt shall be delivered to an agent authorized in writing by the majority of the persons who participated in the taking of the fish, excluding the commercial fisherman receiving the original copy.

(c) (1) Every commercial fisherman or his or her designee, who transports, causes to be transported, or delivers to another person for transportation, any fish, except herring, taken from the waters of this state or brought into this state in fresh condition, shall fill out a transportation receipt on forms provided by the department at the time the fish are brought ashore.

(2) The name of the person transporting the fish shall be entered on the transportation receipt.

(3) The original signed copy of the transportation receipt shall be delivered by the commercial fisherman to the department on or before the first and 16th day of each month. A copy of the

transportation receipt shall be retained by the commercial fisherman who filled it out for a period of four years and shall be available for inspection at any time within that period by the department. A copy of the transportation receipt shall be given to and retained by the person transporting the fish until the fish are sold fresh, processed, or otherwise disposed of.

(4) The transportation receipt is required only for transit purposes.

(5) A person transporting fish from the point of first landing under a transportation receipt is not required to be licensed to conduct the activities of a fish receiver as described in Section 8033.

(d) This section shall become operative on April 1, 1997.

SEC. 10. Section 8051.1 of the Fish and Game Code, as amended by Section 3 of Chapter 873 of the Statutes of 1991, is amended to read:

8051.1. (a) Commencing January 1, 1992, every person who is required to pay a landing tax for sea urchins pursuant to Sections 8041 and 8042 shall pay, in addition to the landing taxes determined in accordance with the schedule in Section 8051, an additional landing tax of one-half cent ($0.005) for each pound, or fraction thereof, of sea urchins, determined as provided in Section 8042. Those persons shall be responsible for the total amount of taxes payable to the department pursuant to this section and shall remit that amount to the department with all other taxes due and payable. However, those persons shall deduct an amount equal to one-quarter of one cent ($0.0025) of the tax payable pursuant to this subdivision for each pound, or fraction thereof, of sea urchins, from payments made to divers for sea urchins, as listed on forms issued pursuant to Section 8043.

(b) Commencing January 1, 1992, in addition to the additional landing tax authorized pursuant to subdivision (a), every person who is required to pay a landing tax for sea urchins pursuant to Sections 8041 and 8042 shall pay an additional landing tax of one-half cent ($0.005) for each pound, or fraction thereof, of sea urchins, and shall deduct the amount of that tax from payments made to divers for sea urchins as listed on forms issued pursuant to Section 8043, and shall remit that amount to the department with all other landing taxes due and payable.

(c) This section shall become inoperative on March 1, 1996, and as of January 1, 1997, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 11. Section 8051.1 of the Fish and Game Code, as added by Section 4 of Chapter 873 of the Statutes of 1991, is repealed.

SEC. 12. Section 8051.2 of the Fish and Game Code is amended to read:

8051.2. (a) The landing tax collected pursuant to Section 8051.1 shall be deposited in the Fish and Game Preservation Fund and 50 percent of the revenue deposited shall be used solely for the Sea

Urchin Resources Enhancement Program in support of the recommendations of the committee established by subdivision (c) and other sea urchin resource enhancement measures as provided in the annual Budget Act. The remaining 50 percent of the revenue shall be used solely for research and management activities to monitor and maintain the sea urchin resource. The department shall maintain internal accountability necessary to ensure that all restrictions on the expenditure of Sea Urchin Resources Enhancement Program funds and research and management funds are met.

(b) An amount, not to exceed 15 percent of each of the allocations made pursuant to subdivision (a) from the total annual revenues deposited in the fund pursuant to subdivision (a), may be used by the department for the administration of the Sea Urchin Resources Enhancement Program and the research and management activities, respectively, including any reasonable and necessary expenses.

(c) The Commercial Sea Urchin Advisory Committee in existence on October 14, 1991, which consists of 12 members selected by the director, shall be continued in existence and renamed the director's Sea Urchin Advisory Committee. One member shall be chosen from the personnel of the department. Ten members shall be selected, with alternates, from nominations submitted by sea urchin fishermen and processors and by associations representing the commercial sea urchin industry of California. Five of the industry members shall be from northern California, two representing divers and three representing processors. At least one of the northern California processor representatives shall reside in a geographical area other than Fort Bragg. Five of the industry members shall be from southern California, three representing divers and two representing processors. All of the California diver representatives shall reside in different geographical areas of the state. The area marine coordinator from the University of California at Davis shall be the other member.

For the money available to the Sea Urchin Resource Enhancement Program, the committee may annually submit to the department proposed projects and a budget for the program. The department, after conducting a public review and discussion, shall incorporate all or part of the proposed projects and budget recommendations in its submittal to the Governor's Budget.

(d) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 13. Section 8140 of the Fish and Game Code is amended to read:

8140. All fish, the taking of which is not prohibited for commercial purposes, and for which a season is not otherwise specified, may be taken at any time for commercial purposes.

SEC. 14. Section 8150.9 is added to the Fish and Game Code, to

read:

8150.9. Notwithstanding Section 8150.8 or any other provision of this article governing the quota of sardines, the department shall determine on or before October 15 each year if there is any portion of the quota for the taking of sardines established pursuant to Section 8150.7 that has not been taken on or before September 30, and if the department determines that a portion of the quota has not been taken the department shall reallocate the total remaining amount on or before October 15 with one-half of the amount allocated for fishermen landing their catches north of San Simeon Point and one-half allocated for fishermen landing their catches south of San Simeon Point. Except for provisions governing the quota, all other provisions of law regulating the portion so reallocated shall apply to the reallocated portion.

SEC. 15. Section 8280 of the Fish and Game Code is amended to read:

8280. (a) On and after November 1, 1992, no person shall land Dungeness crab for commercial purposes without having obtained from the department a revocable, annual Dungeness crab permit. The permit is valid from April 1 to March 31, inclusive, of the following year, or, if issued on or after April 1, for the remainder of that permit year. Except as otherwise provided by statute the permit is not transferable.

(b) The department shall issue Dungeness crab permits only to the following persons:

(1) A person who landed crab commercially in this state in his or her own name, as documented by one or more landing receipts issued pursuant to Section 8043 between August 5, 1982, and August 5, 1992.

(2) A person who had a permit issued under this section in the previous permit year and who landed Dungeness crab commercially in this state in his or her own name in that previous permit year, as documented by one or more landing receipts issued pursuant to Section 8043.

(3) (A) A person who is qualified pursuant to hardship, as determined pursuant to Section 8280.5.

(B) The permit issued to a person who qualified pursuant to this paragraph in the previous season and who participated in the California Dungeness crab fishery during that season shall not be renewed unless the person files an affidavit with the department stating that the person is not eligible to participate with the vessel or gear for which the investment under subdivision (b) was made in the Dungeness crab fishery of any other state because of restrictions imposed by the other state on the issuance of permits or licenses for the Dungeness crab fishery.

(c) The department shall charge a fee for each Dungeness crab permit to pay all reasonable and necessary costs for carrying out this section. Before April 1, 1993, the fee for the permit shall be one hundred dollars ($100), and, on and after April 1, 1993, the fee for the

permit shall be seventy-five dollars ($75). No person shall be issued more than one Dungeness crab permit.

(d) (1) Except as provided in paragraph (2), each person listed on a landing receipt submitted for the purpose of landing Dungeness crab shall have a Dungeness crab permit.

(2) Upon application by the permittee and approval by the department, the department may authorize one or more persons to substitute for the permittee and to land Dungeness crab under the authority of the permit from one or more vessels for which the permittee is the registered owner.

(e) A California commissioner or other representative from California on the Pacific States Marine Fisheries Commission shall transmit to the Legislature a copy of its tristate Dungeness crab study, along with any findings and recommendations, on the need to limit entry into this state's Dungeness crab fishery or to otherwise restrict the amount of gear that may be used in that fishery within six months of the completion of that study.

(f) The department may, until December 1, 1993, enter into contracts for the purpose of producing and printing Dungeness crab permits without complying with Sections 10301, 10339, and 10340 of the Public Contract Code.

(g) This section shall remain in effect until January 1, 1995, and as of that date is repealed, unless a later enacted statute which is enacted before January 1, 1995, deletes or extends that date.

SEC. 16. Section 8280.5 is added to the Fish and Game Code, to read:

8280.5. (a) The director may convene a Dungeness crab permit review panel for the purpose of reviewing applications from persons who apply for a Dungeness crab permit because of hardship. The applicant shall pay a nonrefundable review fee of two hundred fifty dollars ($250) to the department. The panel shall consist of the director or his or her designee, one member of the commission or a designee of the commission, and one public member who has experience in the Dungeness crab fishery, selected by the director. The members of the Dungeness crab permit review panel shall serve without compensation.

(b) The Dungeness crab permit review panel shall determine whether the applicant shall be issued a Dungeness crab permit because of hardship. An applicant for a Dungeness crab permit issued because of hardship shall meet all of the following requirements:

(1) Between November 1, 1989, and November 1, 1992, the person made an investment of five thousand dollars ($5,000) or more in commercial fishing equipment or gear specific to the Dungeness crab fishery or in a vessel that was used to land Dungeness crab in California between August 5, 1989, and August 5, 1992.

(2) At the time of the investment made pursuant to paragraph (1), the person held a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1.

(3) The person has at least one year's experience as a crewmember on a vessel used in the Dungeness crab fishery.

(4) The person is ineligible to participate with the vessel or gear for which the investment was made in the Dungeness crab fishery of any other state because of a moratorium on the issuance of permits or licenses for that fishery or any other license, permit, or limitation system that precludes the participation of that person in any other state's Dungeness crab fishery.

(c) The review panel shall consider all oral and written evidence of hardship presented by the applicant to the review board, including, but not limited to, evidence relating to any of the following facts:

(1) The person made the investment described in paragraph (1) of subdivision (b) in good faith with reasonable anticipation of that person's ability to enter into the California Dungeness crab fishery.

(2) At the time of that investment, the person could reasonably have expected to obtain a California Dungeness crab permit.

(d) If the review panel determines that the person meets the requirements of this section, it shall report that determination to the department. The department shall issue the permit pursuant to paragraph (3) of subdivision (b) of Section 8280.

SEC. 17. Section 8399.1 is added to the Fish and Game Code, to read:

8399.1. (a) In District 10, it is unlawful to engage in the following activities:

(1) Attract squid by a light displayed from any vessel, except a vessel deploying nets for the take, possession, and landing of squid or from the seine skiff of the vessel deploying nets for the take, possession, and landing of squid.

(2) Attract squid by a light displayed from any vessel whose primary purpose is not the deployment, or assisting in the deployment, of nets for the take, possession, and landing of squid.

(3) To encircle any vessel, other than by the seine skiff of a vessel deploying nets for the take, possession, and landing of squid, while that vessel is engaged in the taking of squid.

(b) For purposes of this section, "seine skiff" means a vessel that is not licensed by the federal government or registered by the Department of Motor Vehicles, that is used to assist a larger federally-licensed or state-registered fishing vessel by assisting in the deployment and retrieval of nets and the landing of fish, and that travels with that larger fishing vessel at all times, that is used solely at the direction of the operator of the larger fishing vessel, and that is owned by the owner of the larger fishing vessel.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 19. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to maintain enforcement of groundfish landings in the current fishing year, in order to alleviate hardships caused by the omission of provisions for survivors, for landings from vessels whose permitted owners are ill or injured, and for persons who have prepared to enter the Dungeness crab fishery in good faith, in order to provide funding for completion of watershed assessments and fishery restoration planning in the current calendar year, in order to provide for weighing groundish, in order to provide for the taking of unfilled portions of quotas of sardine, in order to regulate the taking of squid with lights, in order to extend the special landing taxes to pay for the enhancement of the sea urchin fishery and to redirect allocations of those special taxes, in order to provide for information needed in landing receipts, and in order to provide for commercial fishing for certain species in the current calendar year as soon as possible, it is necessary for this act to take effect immediately.

CHAPTER 618

An act to add Section 4008.1 to the Public Utilities Code, relating to vehicles.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 4008.1 is added to the Public Utilities Code, to read:

4008.1. Grape gondolas, as defined by subdivision (h) of Section 34501.14 of the Vehicle Code, which meet the conditions set forth in subdivision (i) of that section, are exempt from the registration requirements of this chapter.

CHAPTER 619

An act to amend Section 25205.16 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 25205.16 of the Health and Safety Code is amended to read:

25205.16. (a) (1) The department may impose an annual verification fee upon all generators, transporters, and facility operators with 50 or more employees which possess a valid identification number issued either by the department or by the Environmental Protection Agency. The fee charged shall be one hundred fifty dollars ($150) for each generator, transporter, and facility operator with 50 or more employees, but less than 75 employees; one hundred seventy-five dollars ($175) for each generator, transporter, and facility operator with 75 or more employees, but less than 100 employees; two hundred dollars ($200) for each generator, transporter, and facility operator with 100 or more employees, but less than 250 employees; two hundred twenty-five dollars ($225) for each generator, transporter, and facility operator with 250 or more employees, but less than 500 employees; two hundred fifty dollars ($250) for each generator, transporter, and facility operator with 500 or more employees. However, no generator, transporter, or facility operator shall be assessed fees pursuant to this section that exceed, in total, five thousand dollars ($5,000).

(2) The generator, transporter, or facility operator subject to the fee shall submit payment of the fee within 30 days of receiving a notice of assessment from the department. The notice shall be sent once during each fiscal year to each holder of a valid identification number. The fee imposed by this section shall be deposited in the Hazardous Waste Control Account and be available for expenditure, upon appropriation by the Legislature, in accordance with this chapter and Chapter 6.8 (commencing with Section 25300). For purposes of this section, "employee" shall have the same meaning set forth in Section 25205.6.

(b) The department shall establish an identification number certification system to biennially verify the accuracy of information related to generators, transporters, and facilities authorized to treat, store, or dispose of hazardous waste. However, if the number of identification numbers issued since the previous certification exceeds 20 percent of the active identification numbers, the department may implement an annual certification. The system shall include only verification of all of the following information:

(1) The name, mailing address, facsimile number, fictitious business name, federal employer number, State Board of Equalization identification number, SIC code, and phone number of the firm or organization engaged in hazardous waste activities.

(2) The name, mailing address, facsimile number, and phone number of the owner of the firm or organization.

(3) The name, title, mailing address, facsimile number, and phone number of a contact person for the firm or organization.

(4) The identification number assigned to the firm or organization.

(5) The site location address or description associated with the firm or organization's identification number provided in paragraph (4).

(6) The number of employees of the firm or organization.

(7) If the firm or organization is a generator, a statement of whether the generator produces RCRA hazardous waste or non-RCRA hazardous waste.

(8) An identification of any of the following hazardous waste activities in which the firm or organization is engaged:

(A) Generation.

(B) Transportation.

(C) Onsite treatment, storage, or disposal.

(9) The waste codes associated with the four largest hazardous waste streams, by volume, of the firm or organization. The federal waste code shall be verified for RCRA hazardous waste and the California waste code shall be verified for non-RCRA hazardous waste.

(c) Any generator, transporter, and facility operator who fails to comply with the requirements of this section, or who fails to provide information required by the department in order to verify the accuracy of hazardous waste activity data, shall be subject to suspension of any and all identification numbers assigned to the generator, transporter, or facility operator.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 620

An act to amend Sections 11402, 11407, 11407.5, 11701, 11701.5, 11702, 11703, 11704, 12101, 12104, 12106, 12108, 12112, 12113, 12121, 12251, 12252, 12253, 12254, 12255, 12257, 12258, and 14006.6 of, to amend the heading of Chapter 4 (commencing with Section 11701) of Division 6 of, and to add Section 12101.5 to, the Food and Agricultural Code, relating to economic poisons.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 11402 of the Food and Agricultural Code is amended to read:

11402. "License" means pest control business license, agricultural pest control adviser's license, or pest control dealer's license.

SEC. 2. Section 11407 of the Food and Agricultural Code is amended to read:

11407. "Pest control dealer" means any person, including any manufacturer, distributor, or retailer who engages in any of the following business activities:

(a) Selling pesticides to users for an agricultural use.

(b) Selling to users any method or device for the control of agricultural pests, such as biological agents, lures, or insect-trapping devices.

(c) Soliciting sales of pesticides by making agricultural use recommendations through field representatives, or other agents.

(d) Selling to a user a pesticide classified pursuant to Section 14004.5 as a restricted material that requires either a permit for possession and use or which may be used only by or under the direct supervision of a certified applicator.

SEC. 3. Section 11407.5 of the Food and Agricultural Code is amended to read:

11407.5. "Pest control dealer" does not include either of the following:

(a) Any person licensed pursuant to Section 11701 to engage for hire in the business of agricultural pest control, as to pesticides recommended or sold by the licensee and applied by the licensee pursuant to the conditions of the license.

(b) Any person licensed to engage in any activity that is defined as structural pest control pursuant to Chapter 14 (commencing with Section 8500) of Division 3 of the Business and Professions Code, as to pesticides recommended or sold by the licensee and applied by the licensee pursuant to the conditions of the license.

SEC. 4. The heading of Chapter 4 (commencing with Section 11701) of Division 6 of the Food and Agricultural Code is amended to read:

CHAPTER 4. PEST CONTROL

SEC. 5. Section 11701 of the Food and Agricultural Code is amended to read:

11701. It is unlawful for any person to engage for hire in the business of pest control, unless the person has a pest control business license for the then current calendar year issued by the director.

SEC. 6. Section 11701.5 of the Food and Agricultural Code is amended to read:

11701.5. Every principal and branch office of a business licensed pursuant to Section 11701 shall have at least one person in a supervisory position who holds a qualified applicator license issued pursuant to Chapter 8 (commencing with Section 12201). The qualified applicator license shall include the categories of pest control activities supervised by that person who is employed by that business.

SEC. 7. Section 11702 of the Food and Agricultural Code is amended to read:

11702. Applicants for a pest control business license shall do all of the following:

(a) Submit information to the director covering the applicant's business and personal qualifications that the director requires.

(b) Designate in the application the qualified applicator who shall be responsible for the conduct of the principal office of the applicant and of each branch location.

(c) Satisfy the director of the responsibility of the applicant as to any of the following:

(1) Equipment and facilities.

(2) Financial ability to perform the work authorized by the license and to respond in damages for any illness, injury, or damage resulting from the work, which ability may be satisfied by insurance in a form satisfactory to the director insuring against liability for personal injury and property damage in an amount prescribed by regulation of the director. The amount shall be related to the volume and type of pest control operations for which the applicant is licensed to perform.

(3) Personal responsibility to conduct the business.

The director shall establish by regulation the general classes of pest control operations in which the applicant may be qualified.

Licensing by the director shall not derogate from the authority of commissioners stated in Sections 11731 to 11741, inclusive.

SEC. 8. Section 11703 of the Food and Agricultural Code is amended to read:

11703. (a) Except as otherwise provided in Sections 11704 and 11707, the application shall be accompanied by a fee of one hundred dollars ($100).

(b) If the applicant maintains any branch office in this state or outside this state and the applicant engages in the pest control business in this state from that branch office, the applicant shall pay

an additional fee of fifty dollars ($50) for each of these branch offices.

SEC. 9. Section 11704 of the Food and Agricultural Code is amended to read:

11704. (a) A person who is regularly engaged in the business of maintenance gardening and who desires to engage in pest control for hire incidental to that business shall qualify for a pest control business license in the maintenance gardener category by passing the certified commercial applicators examination in both the laws and regulation and the landscape maintenance categories.

(b) The maintenance gardener category shall be limited to pest control in ornamental and turf plantings indoors, in commercial parks, or surrounding structures. A contract or verification that the pest control operation is incidental and that maintenance gardening is the primary purpose shall be immediately submitted to the commissioner or director upon request.

(c) An application for a license limited to the maintenance gardener category shall be accompanied by a fee of fifty dollars ($50).

SEC. 10. Section 12101 of the Food and Agricultural Code is amended to read:

12101. No person shall act in the capacity of a pest control dealer or shall engage or offer to engage in the business of, advertise as, or assume to act as a pest control dealer unless he or she is licensed as a pest control dealer pursuant to this chapter.

SEC. 11. Section 12101.5 is added to the Food and Agricultural Code, to read:

12101.5. Each pest control dealer required to be licensed pursuant to Section 12101 shall have and maintain, at the principal office, and at each branch location, a designated agent qualified to actively supervise all operations conducted at that location. The designated agent shall be a person who holds a pest control dealer designated agent license, an agricultural pest control adviser license, a pest control aircraft pilot certificate, or a qualified applicator license issued pursuant to Chapter 8 (commencing with Section 12201).

SEC. 12. Section 12104 of the Food and Agricultural Code is amended to read:

12104. The license for a pest control dealer may be renewed annually upon application in the form prescribed by the director, accompanied by a fee of one hundred dollars ($100), for each license and fifty dollars ($50) for each branch, salesyard store, or sales location by the date of expiration. These fees shall be paid into the State Treasury to the credit of the Department of Food and Agriculture Fund.

SEC. 13. Section 12106 of the Food and Agricultural Code is amended to read:

12106. Each applicant shall satisfy the director as to his or her knowledge of the laws and regulations governing the use and sale of pesticides, and his or her responsibility in carrying on the business of

a pest control dealer.

SEC. 14. Section 12108 of the Food and Agricultural Code is amended to read:

12108. Every licensed pest control dealer who changes his or her address or place of business shall immediately notify the director.

SEC. 15. Section 12112 of the Food and Agricultural Code is amended to read:

12112. Notwithstanding Section 11513, 50 percent of the moneys derived under this chapter shall be available to the director to cover the costs of establishing and administering the pest control dealer's licensing program pursuant to this chapter. The director shall pay 50 percent of the moneys collected to the counties that employ agricultural commissioners and the moneys shall be used by the counties for the enforcement and administration of this chapter. The department shall determine and pay to each county one-half of the deposited application fees and renewal fees that are received from applicants whose principal address at the time of payment, as determined by the director, was located in the county, and the amount of the payments to counties is hereby appropriated from the Department of Food and Agriculture Fund.

SEC. 16. Section 12113 of the Food and Agricultural Code is amended to read:

12113. The director may, after a hearing, refuse, revoke, or suspend a pest control dealer license for violation of the provisions of this division or Division 7 (commencing with Section 12501) relating to pesticides or the rules and regulations adopted pursuant to those provisions. The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 17. Section 12121 of the Food and Agricultural Code is amended to read:

12121. It is unlawful for any person who is subject to this chapter to do any of the following:

(a) Fail to demonstrate to the director qualifications to act in the capacity of a pest control dealer.

(b) Fail to notify the director of any transfer or change of address.

(c) Fail to comply with the provisions of this division or Division 7 (commencing with Section 12501) relating to pesticides or the rules and regulations adopted pursuant to those provisions.

(d) Make false or fraudulent statements, or misrepresent or fail to disclose any material fact in making application for a license or renewal of license.

(e) Make any false or misleading statements or promises of a character likely to influence, induce, or deceive, or publish, or cause to be published, or distributed or displayed any false or misleading literature or advertisement, concerning any pesticide or method of pest control.

SEC. 18. Section 12251 of the Food and Agricultural Code is amended to read:

12251. No person shall act as a designated agent of a pest control dealer who is licensed pursuant to Chapter 7 (commencing with Section 12101), unless that person is licensed as a pest control dealer designated agent pursuant to this article.

SEC. 19. Section 12252 of the Food and Agricultural Code is amended to read:

12252. (a) Application for a pest control dealer designated agent license shall be in the form prescribed by the director. Each application shall state the name and address of the applicant and shall be accompanied by a fee of fifteen dollars ($15). These fees shall be paid into the State Treasury to the credit of the Department of Food and Agriculture Fund.

(b) All licenses issued pursuant to this article shall expire on December 31 of the year for which they are issued.

(c) Licenses may be renewed annually upon application in the form prescribed by the director and upon payment of a fee of fifteen dollars ($15). A penalty of ten dollars ($10) shall be added to any license renewal fee that is not paid by the date of expiration of the previously issued license.

SEC. 20. Section 12253 of the Food and Agricultural Code is amended to read:

12253. Before initial license is issued, the applicant shall pass an examination to demonstrate to the director the applicant's knowledge of the laws and regulations governing the use and sale of pesticides and the responsibility in carrying on the business of a pest control dealer.

SEC. 21. Section 12254 of the Food and Agricultural Code is amended to read:

12254. The director shall issue to each applicant who satisfies the requirements of this chapter a pest control dealer designated agent license.

SEC. 22. Section 12255 of the Food and Agricultural Code is amended to read:

12255. Every licensed pest control dealer designated agent who changes his or her address shall immediately notify the director of the new address.

SEC. 23. Section 12257 of the Food and Agricultural Code is amended to read:

12257. The director may, after a hearing, refuse, revoke, or suspend a pest control dealer designated agent license for violation of this chapter or Division 7 (commencing with Section 12501). The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code.

SEC. 24. Section 12258 of the Food and Agricultural Code is amended to read:

12258. It is unlawful for any person who is subject to this chapter to do any of the following:

(a) Fail to notify the director of any change of address.

(b) Fail to comply with the provisions of this division or Division 7 (commencing with Section 12501) relating to pesticides or the rules and regulations adopted pursuant to those provisions.

(c) Make false or fraudulent statements, or misrepresent or fail to disclose any material fact in making an application for a license or renewal of a license.

(d) Make any false or misleading statements in any written record or report relating to pesticides or involving the pest control dealer business where that person is, or was, employed.

SEC. 25. Section 14006.6 of the Food and Agricultural Code is amended to read:

14006.6. (a) A permit shall not be required for the agricultural use of any pesticide not designated as a restricted material unless the commissioner determines that its use will present an undue hazard when used under local conditions.

(b) Permits for the use of pesticides shall not be required of persons found to be qualified by the director who are engaged in experimentation or research on the use of pesticides, where no charge is made to the person in charge of the property treated.

(c) A permit shall not be required for the possession of pesticides by a registrant, as defined in Section 12755, or by a licensed pest control dealer when operating pursuant to the registration or the license; by commercial warehouses storing pesticides; or for the possession and use of these materials when specifically exempted by regulation of the director in cases in which the mitigation measures provided by the permit system are not necessary to avoid injury to the environment or to any person, animal, crop, or property.

(d) Permits for the use of pesticides shall not be required of persons operating pursuant to a license issued under Chapter 14 (commencing with Section 8500) of Division 3 of the Business and Professions Code.

SEC. 26. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 621

An act to amend Section 12107 of, to amend and repeal Sections 12604 and 12608 of, to amend, repeal, and add Sections 12603 and 12609 of, and to repeal Section 12614 of, the Business and Professions Code, relating to commercial sales.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 12107 of the Business and Professions Code is amended to read:

12107. The director shall establish tolerances and specifications and other technical requirements for commercial weighing and measuring. In doing so, the director shall adopt, by reference, the latest standards as recommended by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 44 "Specifications and Tolerances, and other Technical Requirements for Weighing and Measuring Devices," except as specifically modified, amended, or rejected by regulation adopted by the director.

The director may, by regulation, establish tolerances and specifications for commercial weighing and measuring devices not included in Handbook 44.

Any regulation shall be adopted, amended, or repealed in conformity with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

It shall be unlawful for any person to violate any of the rules, regulations, tolerances, specifications, or standards established under this section.

SEC. 2. Section 12603 of the Business and Professions Code is amended to read:

12603. No person subject to the prohibition in Section 12602 shall distribute any packaged commodity unless in conformity with regulations which shall be established by the director which shall provide that:

(a) The commodity shall bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer, or distributor.

(b) The net quantity of contents (in terms of weight, measure, numerical count, or time) shall be separately and accurately stated in a uniform location upon the principal display panel of that label.

This section shall remain in effect only until February 14, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before February 14, 1994, deletes or extends that date.

SEC. 3. Section 12603 is added to the Business and Professions Code, to read:

12603. No person subject to the prohibition in Section 12602 shall distribute any packaged commodity unless it is in conformity with regulations that shall be established by the director that shall provide:

(a) The commodity shall bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer, or distributor.

(b) The net quantity of contents (in terms of weight or mass, measure, numerical count, or time) shall be separately and accurately stated in a uniform location upon the principal display panel of that label, using the most appropriate units of both the customary inch-pound system of measure, and except as provided in subdivisions (c) and (d), the SI (Systeme International d'Unites) metric system.

(c) On a random package labeled in terms of pounds and decimal fractions of the pound, the statement may be carried out to not more than three decimal places and is not required to, but may include a statement in terms of the SI metric system carried out to not more than three decimal places.

(d) The requirements of subdivision (b) concerning labeling using the metric system do not apply to nonconsumer packages, foods that are packaged at the retail store level, or to the sale or distribution of products whose labels have been printed prior to February 14, 1994.

(e) This section shall become operative on February 14, 1994.

SEC. 4. Section 12604 of the Business and Professions Code is amended to read:

12604. (a) The separate label statement of the net quantity of contents appearing on or affixed to any package shall be in conformity with regulations adopted by the director. The regulations shall require the following:

(1) On a package containing less than four pounds or one gallon and labeled in terms of weight or fluid measure, the statement shall, unless subdivision (b) applies and the statement is set forth in accordance with that subdivision, be expressed both in ounces (with identification as to avoirdupois or fluid ounces) and, if applicable, in pounds for weight units, with any remainder in terms of ounces or common or decimal fractions of the pound; or in the case of liquid measure, in the largest whole unit (quarts, quarts and pints, or pints, as appropriate) with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart.

(2) On a package labeled in terms of linear measure, the statement shall be expressed both in terms of inches and the largest whole unit (yards, yards and feet, or feet, as appropriate) with any remainder in terms of inches or common or decimal fractions of the foot or yard.

(3) On a package labeled in terms of measure of area, the statement shall be expressed both in terms of square inches and the largest whole square unit (square yards, square yards and square

feet, or square feet, as appropriate) with any remainder in terms of square inches or common or decimal fractions of the square foot or square yard.

(4) The statement shall appear in conspicuous and easily legible type in distinct contrast (by typography, layout, color, embossing, or molding) with other matter on the package.

(5) The statement shall contain letters or numerals in a type size which shall be established in relationship to the area of the principal display panel of the package, and uniform for all packages of substantially the same size.

(6) The statement shall be so placed that the lines of printed matter included in the statement are generally parallel to the base on which the package rests as it is designed to be displayed.

(b) Notwithstanding subdivision (a), on a random package, the statement shall be in conformity with regulations adopted by the director which shall provide that the statement may be expressed in terms of pounds and ounces or in pounds and decimal fractions of the pound.

(c) This section shall become inoperative on February 14, 1994, and, as of January 1, 1995, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1995, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 12608 of the Business and Professions Code is amended to read:

12608. (a) A statement of weight shall be in terms of the avoirdupois pound and ounce. A statement of liquid measure shall be in terms of the United States gallon of 231 cubic inches, quart, pint, and fluid ounce and shall express the volume at 68° Fahrenheit (20° centigrade). Statements of content for liquid petroleum products shall be expressed at 60° Fahrenheit; refrigerated commodities shall be expressed at 40° Fahrenheit; and frozen products shall be expressed at the temperature at which they are kept or offered for sale. A statement of dry measure shall be in terms of the United States bushel of 2,150.42 cubic inches, peck, dry quart, and dry pint. A statement of linear measure shall be in the terms of the standard yard, foot, and inch. A statement of time measure shall be in terms of the standard hour, minute, and second. A statement of net quantity in terms of the metric system may be used in addition to the required statement of content. A statement of numerical count shall be expressed either in English words or Arabic numerals.

Fluid products may be tested by a weights and measures official on the basis of weight as prescribed by regulations of the director.

(b) This section shall become inoperative on February 14, 1994, and, as of January 1, 1995, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1995, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 12609 of the Business and Professions Code is amended to read:

12609. (a) The director shall establish necessary rules and

regulations to carry out the design of this division, or for the testing of packages to verify the net quantity statements. Such regulations shall include exemptions from full compliance with this chapter for good and sufficient reasons. Any such exemptions affecting consumer commodities shall be in agreement with exemptions permitted by federal regulations. Any such rule or regulation, or amendment thereof, shall be adopted and promulgated by the director in conformity with the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) This section shall remain in effect only until February 14, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before February 14, 1994, deletes or extends the date.

SEC. 7. Section 12609 is added to the Business and Professions Code, to read:

12609. The director shall adopt necessary regulations to carry out the purpose of this division and for the testing of packages to verify the net quantity statements. In adopting these regulations, the director shall adopt by reference the packaging and labeling requirements recommended by the National Conference on Weights and Measures and published in the current edition of the National Institute of Standards and Technology Handbook 130, Uniform Packaging and Labeling Regulation, except insofar as those requirements are specifically modified, amended, or rejected by regulation by the director. The regulations shall include exemptions from full compliance with this chapter for good and sufficient reasons. Any exemptions affecting consumer commodities shall be in conformance with exemptions permitted by federal regulations. Any regulation, or amendment thereof, shall be adopted by the director in conformity with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

This section shall become operative on February 14, 1994.

SEC. 8. Section 12614 of the Business and Professions Code is repealed.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 622

An act to add Section 1748.12 to the Civil Code, relating to credit cards.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1748.12 is added to the Civil Code, to read:

1748.12. (a) For purposes of this section:

(1) "Cardholder" means any consumer to whom a credit card is issued.

(2) "Consumer credit reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the business of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer credit reports, as defined in subdivision (c) of Section 1785.3, to third parties, but does not include any governmental agency whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes. "Consumer credit reporting agency" also does not include a person solely by reason of conveying a decision whether to guarantee a check in response to a request by a third party. The terms used in this paragraph shall be construed in accordance with the definitions in Section 1785.3.

(3) "Credit card" means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit. "Credit card" does not mean any of the following:

(A) Any single credit device used to obtain telephone property, labor, or services in any transaction under public utility tariffs.

(B) Any device that may be used to obtain credit pursuant to an electronic fund transfer but only if the credit is obtained under an agreement between a consumer and a financial institution to extend credit when the consumer's asset account is overdrawn or to maintain a specified minimum balance in the consumer's asset account.

(C) Any key or card key used at an automated dispensing outlet to obtain or purchase petroleum products, as defined in subdivision (c) of Section 13401 of the Business and Professions Code, which will be used primarily for business rather than personal or family purposes.

(4) "Marketing information" means the categorization of cardholders compiled by a credit card issuer, based on a cardholder's shopping patterns, spending history, or behavioral characteristics derived from account activity which is provided to a marketer of goods for consideration. "Marketing information" does not include

aggregate data which does not identify a cardholder or any communications to any person in connection with any transfer, processing, billing, collection, chargeback, fraud prevention, credit card recovery, or acquisition of or for credit card accounts.

(b) Prior to disclosing marketing information concerning a consumer to any person, except a third party when the third party is handling a mailing for the card issuer to any of its cardholders, the credit card issuer shall provide a written notice, to all persons who are holders of the issuer's credit cards, that clearly and conspicuously describes the cardholder's right to prohibit the disclosure to marketers of goods of marketing information concerning the consumer which discloses the consumer's identity. The notice shall include either a preprinted form by which the cardholder may exercise this right or shall advise the consumer of a toll-free telephone number which the consumer may call to exercise this right.

(c) The notice required by subdivision (b) shall be provided to all new cardholders at or before the time the credit card is initially delivered, and shall be provided to all current cardholders who do not already have on file an effective election to prohibit disclosure of marketing information pursuant to subdivision (b).

(d) An election to prohibit disclosure of marketing information, as provided in subdivision (b), shall terminate upon receipt by the credit card issuer of notice from the cardholder that the cardholder's election under subdivision (b) is no longer effective.

(e) The requirements of subdivisions (b) and (c) do not apply to any of the following communication of marketing information by a credit card issuer:

(1) Communications to any party to, or merchant specified in, the credit card agreement, or to any person whose name appears on the credit card or on whose behalf the credit card is issued.

(2) Communications to consumer credit reporting agencies.

(3) Communications to a corporate subsidiary or affiliate of the card issuer specified in clauses (2) and (6) of the second paragraph of subdivision (c) of Section 1785.3 listing exceptions to the definition of "consumer credit report."

(f) If the laws of the United States require disclosure to cardholders regarding the use of personal information, compliance with the federal requirements shall be deemed to be compliance with this section.

(g) This section shall become operative on July 1, 1994.

CHAPTER 623

An act to add and repeal Article 4 (commencing with Section 4669.2) of Chapter 5 of Division 4.5 of the Welfare and Institutions Code, relating to developmental disabilities.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares that the statewide system of services through regional centers, first established in 1965 and expanded in 1977 under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code), and significantly enhanced by Senate Bill 1383 of the 1991–92 Regular Session, Chapter 1011 of the Statutes of 1992, has proven to be a useful way for the state to carry out its mandated responsibilities for persons with developmental disabilities.

(b) The Legislature further finds and declares that in the 15 years since enactment of the Lanterman Act, the system has become more complex as evidenced by the following:

(1) Rapid growth in the caseloads of the 21 regional centers, has resulted in very large and complex organizations.

(2) Changes in the needs of consumers and families and new trends in service delivery have placed different demands on the market of service providers.

(3) Increasingly complex state regulations and policies have impacted the flexibility of regional centers, and have increased the administrative costs of providing services.

(c) These concerns have increased the need for creative alternatives in the development and delivery of regional center services.

(d) In recognition of the system's problems, the Legislature has clarified the intent and value base of the Lanterman Act through legislative hearings pursuant to Senate Resolution 9 of the 1989–90 Regular Session, and Assembly Concurrent Resolution 52 of the 1989–90 Regular Session, involvement with a community initiative, the Lanterman 2000 Initiative, and the passage of Senate Bill 1383 of the 1991–92 Regular Session (Chapter 1011 of the Statutes of 1992).

(e) Therefore, it is the intent of the Legislature to encourage and facilitate the development of innovative means of providing needed services.

(f) It is the further intent of the Legislature in enacting this act, to initiate and review alternative methodologies and to evaluate these methodologies as a basis for determining future statewide system reforms.

SEC. 2. Article 4 (commencing with Section 4669.2) is added to

Chapter 5 of Division 4.5 of the Welfare and Institutions Code, to read:

Article 4. Regional Center Alternatives for Service Delivery

4669.2. Notwithstanding any other provision of law, and provided that there shall be no reduction in direct service to persons eligible for services under this article, a regional center, with the approval of the State Department of Developmental Services, and in consultation with the local area boards, consumer and vendor advisory committees, and local advocacy organizations, may explore and implement any regional center service delivery alternative included in this section for consumers living in the community, as follows:

(a) Alternative service coordination for consumers.

(b) Technical and financial support to consumers, and where appropriate, their families, to provide or secure their own services in lieu of services that regional centers would otherwise provide, purchase, or secure. These programs shall be cost-effective in the aggregate, and shall be limited to consumers who are at imminent risk of moving to a more restrictive setting.

(c) Procedures whereby regional centers may negotiate levels of payment with providers for delivery of specific services to a group of consumers through a mutually agreed upon contract with a specific term and a guaranteed reimbursement amount. Contracted services may be for any specific service or combination of services across vendor categories.

(d) Procedures whereby consumers, regional center representatives, area board representatives, and local service providers may jointly examine and make recommendations to the department for reduced reporting and recording requirements of regional centers. The recommendations shall be made available upon request.

(e) Proposals to reduce reporting and recordkeeping requirements at a regional center.

(f) Procedures whereby a regional center may lease a facility and contract for the provision of services in that facility for regional center clients.

(g) Procedures that encourage innovative approaches to the sharing of administrative resources between regional centers and other public and private agencies serving persons with developmental disabilities.

(h) Proposals for a regional center to purchase a facility for its own office space if it can be shown to be cost-effective. No funds from a regional center's purchase of services budget shall be used for this purchase.

4669.75. Any proposal approved by the department pursuant to this chapter may be implemented immediately upon approval. Prior to submitting a proposal to the department, the regional center shall,

except as provided for in this section, conduct at least one public hearing to receive comments on the proposal. Notice of the public hearing shall be given at least 10 business days in advance of the hearing. Copies of the proposal shall be available for review at least 10 business days prior to the hearing. However, no additional hearing shall be required when the proposal is part of another plan requiring public hearings under statute or regulation. Except for subdivision (i) of Section 4669.2, the proposal shall cease to be implemented by no later than December 31, 1997.

A service delivery alternative shall be required to be implemented within the existing regional center funding allocation and shall be cost-effective to the state. No additional allocation shall be made to permit a regional center to implement a service delivery alternative.

Information on regional center alternative systems, including recommendations regarding the maintenance or expansion of service delivery alternatives, shall be available to the Legislature, upon request, not later than March 31, 1998.

4669.8. This article shall become inoperative on June 30, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 624

An act to amend Sections 11708, 11907, 12205, and 14155 of, to amend the headings of Article 5 (commencing with Section 11891) of Chapter 4 of Division 6 and Article 12 (commencing with Section 12996) of Chapter 2 of Division 7 of, and to add Sections 11517, 11895.5, 12201.1, 12206, and 13000.1 to, the Food and Agricultural Code, relating to economic poisons.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 11517 is added to the Food and Agricultural Code, to read:

11517. Any person whose license or certificate issued pursuant to this division or Chapter 3.6 (commencing with Section 14151) of Division 7 is revoked, or whose application for such a license or certificate is denied for reasons other than his or her failure to satisfy examination requirements, including a qualified applicator or other person who was issued or applied for an agricultural pest control business license, is ineligible to apply or reapply for the same kind of license or certificate for a period of three years from the effective date of the decision to deny or revoke the license or certificate.

SEC. 2. Section 11708 of the Food and Agricultural Code is

amended to read:

11708. The director may refuse to grant any license and may revoke or suspend any license if the applicant or licensee:

(a) Does not have, or has not maintained at its principal office and at each branch location, a person who holds a qualified applicator license issued pursuant to Chapter 8 (commencing with Section 12201) to actively supervise all operations performed for each such location as prescribed by regulations of the director. This subdivision does not apply to businesses that are licensed only in the maintenance gardener category.

(b) Does not have, or has not maintained, adequate safe equipment and facilities to perform the operations undertaken or to be undertaken.

(c) Does not have adequately trained personnel to perform the operations undertaken or to be undertaken.

(d) Violates or permits the violation of any provision of this division and Division 7 (commencing with Section 12501) pertaining to pesticides or of any regulations adopted pursuant thereto by the director or any commissioner or any industrial safety order relating to pesticides issued by the Department of Industrial Relations.

(e) Fails to maintain and report to the director or commissioner, as required, information concerning pest control performed or authorized to be performed by the license or the registration of the commissioner.

Any hearing to deny, suspend, or revoke a license shall be heard under the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, if the director finds on the basis of affidavits submitted to him or her by the enforcement personnel provided in Section 11501.5, or by injured parties, that the protection of the public welfare or safety requires immediate action, the director may, without hearing, temporarily suspend or condition the license of any pest control operator and shall forthwith schedule the matter for hearing. The director may terminate the suspension of, or any condition placed upon, a license upon correction of the defects of equipment, establishment of adequate safety practices, or any other corrective action as he or she deems satisfactory to assure compliance with the requirements of statutes and regulations. In that event, the matter may proceed to hearing as though the license had not been suspended or the conditions placed upon it.

SEC. 3. The heading of Article 5 (commencing with Section 11891) of Chapter 4 of Division 6 of the Food and Agricultural Code is amended to read:

Article 5. Penalties and Injunctive Relief

SEC. 4. Section 11895.5 is added to the Food and Agricultural Code, to read:

11895.5. The commissioner or director may bring an action to

enjoin the violation or the threatened violation of any order made pursuant to this division in the superior court in the county in which the order is issued or the violation occurs or is threatened, and the court may enjoin the violation or threatened violation upon that showing and without further evidence of irreparable injury. The court may compel specific performance of any acts or course of conduct necessary to protect persons, animals, crops, or property.

SEC. 5. Section 11907 of the Food and Agricultural Code is amended to read:

11907. A journeyman's certificate shall not be issued until the applicant has served as an apprentice under a certificate issued pursuant to this chapter for one year and until the applicant presents to the director satisfactory documentary proof consisting of a declaration or affidavit by the holder of a journeyman's certificate attesting to the applicant's performance, under the attesting journeyman's direct and personal supervision, of not less than 150 hours of operation of fixed-wing aircraft or 50 hours of operation of nonfixed-wing aircraft within the previous two calendar years in pest control activities, together with any other evidence as the director may require.

SEC. 6. Section 12201.1 is added to the Food and Agricultural Code, to read:

12201.1. It is unlawful for any person to act in a supervisory capacity or position for a pest control business, except a business licensed only in the maintenance gardener category pursuant to Section 11705, unless the person has a qualified applicator license.

SEC. 7. Section 12205 of the Food and Agricultural Code is amended to read:

12205. A qualified applicator license may be refused, revoked, or suspended by the director, after a hearing, for any of the following:

(a) Failure to comply with this division or Division 7 (commencing with Section 12501) or regulations adopted pursuant to these divisions.

(b) Making any false or fraudulent record or report.

(c) Failure to ensure that the responsibilities of the pest control business specified in regulations are carried out.

(d) Failure to supervise operations, activities, and employees of the pest control business in a manner that ensures compliance with this division and Division 7 (commencing with Section 12501) pertaining to pesticides.

SEC. 8. Section 12206 is added to the Food and Agricultural Code, to read:

12206. Notwithstanding Section 12205, if the director finds on the basis of affidavits submitted to the director by the enforcement personnel specified in Section 11501.5, or by injured parties, that continuance of the license endangers public welfare or safety, the director may, pending a hearing, suspend or place conditions on the license of any qualified applicator. The director may terminate the suspension of, or any condition placed upon, a license upon the

taking of corrective action by the qualified applicator that the director determines satisfactory to assure compliance with statutes and regulations. In that event, the matter may proceed to hearing as though the license had not been suspended or the conditions placed upon it.

SEC. 9. The heading of Article 12 (commencing with Section 12996) of Chapter 2 of Division 7 of the Food and Agricultural Code is amended to read:

Article 12. Penalties and Injunctive Relief

SEC. 10. Section 13000.1 is added to the Food and Agricultural Code, to read:

13000.1. The commissioner or director may bring an action to enjoin the violation or the threatened violation of any order made pursuant to this division in the superior court in the county in which the order is issued or the violation occurs or is threatened, and the court may enjoin the violation or threatened violation upon that showing and without further evidence of irreparable injury. The court may compel specific performance of any acts or course of conduct necessary to protect persons, animals, crops, or property.

SEC. 11. Section 14155 of the Food and Agricultural Code is amended to read:

14155. A qualified applicator certificate may be refused, revoked, or suspended by the director, after hearing, for any of the following:

(a) Failure to comply with any applicable provision of this division or Division 6 (commencing with Section 11401) or any regulation adopted pursuant to these divisions.

(b) Failure to supervise pesticide applications in a manner that ensures compliance with this division and Division 6 (commencing with Section 11401) or any regulation adopted pursuant to these divisions.

(c) Making any false or fraudulent record or report.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 625

An act to amend Sections 17212.1, 17414, 17414.1, and 17423 of the Financial Code, relating to escrow agents.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 17212.1 of the Financial Code is amended to read:

17212.1. All licensees shall notify the commissioner of any changes in shareholders, directors, officers, trustees, managers, and other persons participating in the escrow business directly or indirectly compensated by the escrow agent (other than usual and customary employees who file pursuant to subdivision (d) of Section 17414.1 and Section 17419), by filing by certified mail, return receipt requested, for those persons a statement of identity and questionnaire, as prescribed by the commissioner for those persons, and fingerprints submitted on the form established by the Department of Justice for requesting state summary criminal history information. Persons who have previously submitted fingerprints to the commissioner may so notify the commissioner and need not submit additional fingerprints unless requested to do so by the commissioner. The commissioner shall provide written notice to both the licensee and to the person if any of the information received pursuant to this division shows that the person's employment, participation, or ownership interest would be in violation of Section 17414.1, and upon that notification the escrow agent shall deny the person the employment or interest. No person shall have access to trust funds or sign checks or otherwise perform any activities related to the processing of escrow transactions after the licensed escrow agent has been notified by the commissioner that the person's employment, participation, or ownership interest is in violation of Section 17414.1. The requirements set forth in this section are in addition to those required under Section 17213.

The commissioner may by regulation require licensees to file at such times as he or she may specify additional information as he or she may reasonably require regarding any changes in the information provided in any application filed pursuant to this division.

SEC. 2. Section 17414 of the Financial Code is amended to read:

17414. (a) It is a violation for any person subject to this division or any director, stockholder, trustee, officer, agent, or employee of any such person to do any of the following:

(1) Knowingly or recklessly disburse or cause the disbursal of escrow funds otherwise than in accordance with escrow instructions, or knowingly or recklessly to direct, participate in, or aid or abet in

a material way, any activity which constitutes theft or fraud in connection with any escrow transaction.

(2) Knowingly or recklessly make or cause to be made any misstatement or omission to state a material fact, orally or in writing, in escrow books, accounts, files, reports, exhibits, statements, or any other document pertaining to an escrow or escrow affairs.

(b) Any director, officer, stockholder, trustee, employee, or agent of an escrow agent, who abstracts or willfully misappropriates money, funds, trust obligations or property deposited with an escrow agent, is guilty of a felony. Upon conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution, first to the escrow agent and then to Fidelity Corporation, to the extent it has indemnified the escrow agent. Nothing in this section shall be deemed or construed to repeal, amend, or impair any existing provision of law prescribing a punishment for such an offense.

(c) Any person subject to this division who knows of a person's involvement in an abstraction or misappropriation of money, funds, trust obligations, or property deposited with a licensed escrow agent shall immediately report the abstraction or misappropriation in writing to the commissioner. No person shall be civilly liable for reporting as required under this subdivision, unless the information provided in the report is false and the person providing false information does so with knowledge and malice. The reports filed under this section, including the identity of the person making the filing, shall remain confidential pursuant to state law.

SEC. 3. Section 17414.1 of the Financial Code is amended to read:

17414.1. (a) Any person who has been convicted of or pleaded nolo contendere to any crime specified in subdivision (b) within the past 10 years, or has been held liable in any civil action by final judgment or any administrative judgment by any public agency within the past seven years, of any of the provisions specified in subdivision (b), shall not serve in any capacity as an officer, director, stockholder, trustee, agent, or employee of an escrow agent, or in any position involving any duties with an escrow agent, in this state. This subdivision shall not apply to any person whose office, employment, ownership interest, or other participation in the business of a licensed escrow agent commenced prior to January 1, 1992.

(b) Subdivision (a) applies to criminal convictions of, pleas of nolo contendere to, or civil or administrative judgments entered for offenses including the following:

(1) Offenses specified in Chapter 18 (commencing with Section 3350) of Division 1.

(2) Offenses specified in Article 4 (commencing with Section 5300) of Chapter 1 of Division 2.

(3) Offenses specified in Article 8 (commencing with Section 14750) of Chapter 4 of Division 5.

(4) Offenses specified in Chapter 3 (commencing with Section 17400), and Chapter 7 (commencing with Section 17700) of Division

6.

(5) Offenses specified in Chapter 6 (commencing with Section 18435) of Division 7.

(6) Offenses specified in provisions of the laws of the United States added or amended by the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Public Law 101-73).

(7) Offenses involving robbery, burglary, theft, embezzlement, fraud, fraudulent conversion or misappropriation of property, forgery, bookmaking, receiving stolen property, counterfeiting, controlled substances, extortion, checks, credit cards, or computer violations specified in Section 502 of the Penal Code.

For the purpose of this section, but not Section 17423, an offense does not include a conviction for which the person has obtained a certificate of rehabilitation from a court of competent jurisdiction under Section 1203.4 or 4852.13 of the Penal Code or a similar certificate of rehabilitation obtained in a foreign jurisdiction.

(c) On and after January 1, 1992, any person who seeks employment by, or an ownership interest in, or other participation in the business of a licensed escrow agent shall, as a condition to obtaining that employment, interest, or participation, authorize Fidelity Corporation and the commissioner, or both, to have access to that person's state summary criminal history information, as defined in Section 11105 of the Penal Code, for purposes of determining whether the person has a prior conviction of, or pleaded nolo contendere to, a criminal offense specified in subdivision (b).

(d) On or before the 10th day of employment, each escrow agent shall obtain and forward to the commissioner the fingerprints of persons seeking employment by an escrow agent. The fingerprints shall be submitted by certified mail, return receipt requested, on the form established by the Department of Justice for requesting state summary criminal history information. Persons who have previously submitted fingerprints to the commissioner may so notify the commissioner and need not submit additional fingerprints unless requested to do so by the commissioner. The commissioner shall provide written notice to both the escrow agent and to the person if any of the information received pursuant to this division shows that the person's employment would be in violation of Section 17414.1, and the escrow agent shall deny the person the employment. No person whose employment is in violation of subdivision (a) shall have access to trust funds or sign checks or otherwise perform any activities related to the processing of escrow transactions after the licensed escrow agent has been notified by the commissioner that the person's employment is in violation of subdivision (a).

(e) Any state summary criminal history information obtained pursuant to this section shall be kept confidential and no recipient shall disclose the contents other than for the purpose of determining eligibility for employment by, or acquisition of an ownership interest in, or other participation in the business of a licensed escrow agent.

(f) The authority granted by this section to the commissioner or to Fidelity Corporation shall be in addition to any other authority granted by law to obtain information about any person who is subject to this division. Nothing in this section shall be construed to limit any authority of the commissioner or Fidelity Corporation otherwise provided by law.

(g) Any person who knowingly violates subdivision (a) or (d), including, but not limited to, any escrow agent who permits employment by, or an ownership interest in, or other participation in the business of an escrow agent in violation of subdivision (a) or (d) shall, upon conviction, be subject to punishment as set forth in Section 17700. Any person who knows of a violation of subdivision (a) or (d) shall immediately report the violation in writing to the commissioner. No person shall be civilly liable for reporting as required under this subdivision, unless the information provided in the report is false and the person providing false information does so with knowledge and malice. The reports filed under this section, including the identity of the person making the filing, shall remain confidential pursuant to state law.

(h) Nothing in this section shall be construed to permit the reinstatement of any person barred by the commissioner pursuant to Section 17423 nor to prohibit the commissioner from bringing any action pursuant to Section 17423.

(i) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

SEC. 4. Section 17423 of the Financial Code is amended to read:

17423. (a) The commissioner may, after appropriate notice and opportunity for hearing, by order, censure or suspend for a period not exceeding 12 months, or bar from any position of employment, management, or control any escrow agent, or any other person, if the commissioner finds either of the following:

(1) That the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the escrow agent or to the public.

(2) That the person has been convicted of or pleaded nolo contendere to any crime, or has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any offense specified in subdivision (b) of Section 17414.1, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of this division.

(b) Within 15 days from the date of a notice of intention to issue

an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Upon receipt of a request, the matter shall be set for hearing to commence within 30 days after such receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of such notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.

(c) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any escrow processing activities, including disbursing any trust funds in the escrow agent's possession, custody or control, and the financial institution holding trust funds shall be so notified by service of the notice, accusation and other administrative pleadings. The prohibition against disbursement of trust funds may be set aside, in whole or in part, by the commissioner for good cause.

(d) Fidelity Corporation shall disclose to all licensees the identity of persons who have been censured, suspended, or barred from any position of employment, management, or control.

(e) Persons suspended or barred under this section are prohibited from participating in any business activity of a licensed escrow agent and from engaging in any business activity on the premises where a licensed escrow agent is conducting escrow business. This subdivision shall not be construed to prohibit suspended or barred persons from having their personal escrow transactions processed by a licensed escrow agent.

(f) This section shall apply to any violation, conviction, plea, or judgment occurring at any time prior to and after the enactment of this section.

(g) The provisions of Section 17414.1 exempting convictions for which a person has obtained a certificate of rehabilitation from the prohibition against serving as an officer, director, stockholder, trustee, agent, or employee of an escrow agent, or in any position involving any duties with an escrow agent, shall not apply to permit the reinstatement of any person barred by the commissioner pursuant to this section, nor to prohibit the commissioner from bringing any action pursuant to this section.

(h) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

CHAPTER 626

An act to add Chapter 10 (commencing with Section 35260) to Part 4 of Division 13 of the Water Code, relating to water districts.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 10 (commencing with Section 35260) is added to Part 4 of Division 13 of the Water Code, to read:

CHAPTER 10. METHOD OF ELECTION FOR THE LOS ALISOS WATER DISTRICT

35260. This chapter shall apply only to the Los Alisos Water District. For purposes of this chapter, "district" means the Los Alisos Water District.

35261. Notwithstanding any other provision of law, or the bylaws of the district, all elections within the district, including elections for director and elections that are required by law to authorize any special taxes or bonded indebtedness, shall be conducted as resident voter elections in accordance with this chapter. Nothing in this chapter shall be construed to require resident voter approval of bonds where voter approval is not required under the statutory or constitutional provisions in effect prior to January 1, 1994.

35262. Qualified voters within the district shall be residents of, and registered voters in, the district.

35263. All directors elected after January 1, 1994, shall be residents of the district and shall be registered at the time of their election and during their term of office.

35264. Directors of the district shall be elected on an at-large basis unless the board of directors determines that directors shall be elected by divisions. The term "by divisions" as used in this chapter means the election of directors by voters of the division alone.

35265. Notwithstanding any other provision of law, the board of directors may at any time establish divisions within the district in accordance with the provisions of this chapter. If the board of directors decides to establish divisions, all of the following shall apply:

(a) The board of directors shall, by resolution, divide the district into as many divisions as there are directors and assign a number to each division. Divisions shall be as nearly equal in population as practicable.

(b) After approving the election of directors by divisions, the board of directors shall, by resolution, not less than 120 days prior to the next general district election, designate which divisions shall elect directors at that election to succeed the directors whose terms then expire. The remaining divisions shall elect directors at the

general district election next following that election.

(c) Each director elected by division shall be a resident of that division.

(d) The board of directors may, by resolution, at any time after initially dividing the district into divisions, but not less than 120 days before a general district election, change the boundaries of the divisions to keep them as nearly equal in population as practicable.

35266. (a) At the November 1994, general district election, the terms of office of the three directors who, or whose predecessors, were elected in 1991, shall be shortened and shall expire upon the election and qualification of their successors. At the November 1996, general district election, the terms of office of the two directors who, or whose predecessors, were elected in 1993, shall be shortened and shall expire upon the election and qualification of their successors.

(b) The general district election shall be held on the first Tuesday after the first Monday of November in each even-numbered year to choose a successor for each director, the term of whose office will expire on the last Friday in that month.

(c) Except as provided otherwise in this article, in each general district election the form of the ballot and the conduct of the election shall be governed by the Uniform District Election Law (Part 3 (commencing with Section 23500) of Division 14 of the Elections Code) for resident voting elections.

35267. This chapter does not in any way invalidate any act of the district, its directors, or its officers and employees made or performed while the district was operating as a landowner voting district.

35268. This chapter does not affect any acts or proceedings heretofore taken for the authorization, issuance, or sale of any bonds of the district in any manner provided by law prior to January 1, 1994, or affect the ability of the district to sell and issue any bond heretofore authorized. For the purposes of this chapter, "bonds" includes notes and any other evidences of indebtedness.

35269. Notwithstanding any other provision of law, the board of directors may at any time alter, repeal, or amend the district's bylaws by a majority vote. Any alteration, repeal, or amendment to the bylaws shall be recorded with the county recorder of each affected county.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the Los Alisos Water District. The facts constituting the special circumstances that distinguish the district from other districts formed under the California Water District Law (Division 13 (commencing with Section 34000) of the Water Code) are its greater population and nonagricultural land uses.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the

local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 627

An act to amend Section 21221 of the Public Contract Code, and to amend Sections 2, 6, 19, and 26 of the Vallejo Sanitation and Flood Control District Act (Chapter 17 of the Statutes of 1952, First Extraordinary Session), relating to the Vallejo Sanitation and Flood Control District.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 21221 of the Public Contract Code is amended to read:

21221. (a) In all work of improvement or repair of any of the works or property of the district, and in the furnishing of materials or supplies therefor, when the expenditures required for the same exceeds the sum of four thousand dollars ($4,000), the work shall be undertaken by contract, and shall be let to the lowest responsible bidder, after notice by publication in the district pursuant to Section 6066 of the Government Code and by posting the notice for at least five days at or near the door of the meeting place of the board of trustees prior to the date set for opening bids. The notices shall distinctly state the work contemplated or the materials or supplies required.

(b) The board of trustees may reject any and all bids presented and readvertise and post in their discretion.

(c) The board may declare and determine that, in its judgment, the work in question may be performed more economically by day labor or the materials or supplies furnished at a lower price in the open market, and they may thereafter proceed to have the work done or the materials purchased without regard to this section.

(d) In case of a great public calamity, such as sudden fire, flood, storm, epidemic, or act of God, the board of trustees may declare a state of great public emergency and proceed to have all necessary work done and materials and supplies furnished without regard to this section.

(e) The work or improvement provided for in this act may be located, constructed, and maintained in, along, or across any public road or highway in the County of Solano, in a manner that provides

security for life and property, but the board of trustees shall restore, or cause to be restored, the road or highway to its former state as near as may be, so as not to impair its usefulness.

SEC. 2. Section 2 of the Vallejo Sanitation and Flood Control District Act (Chapter 17 of the Statutes of 1952, First Extraordinary Session) is amended to read:

Sec. 2. Objects and Purposes of Act and Powers of District. The objects and purposes of this act are to provide for the collection and disposal of sewage and industrial waste and for the control and disposition of the storm and flood waters of the district, and to protect the public health and also to protect from damage from the storm and flood waters the waterways, property, public highways and public places in the district.

The Legislature hereby declares that special facts and circumstances peculiar to the area within the district makes the accomplishment of the purposes of this act impossible under existing general law and special legislation is necessary. The state and the people thereof have a primary and supreme interest in securing to the inhabitants and property owners within the district adequate facilities for the collection and disposal of sewage and the protection from waters naturally flowing into the district from the surrounding mountainous watershed. Special investigation has shown that the conditions within the district are peculiar to that area and that this act is essential to carry out the purposes herein expressed and for the elimination of duplication of governmental authority and securing greater economy of administration. It is further found and determined that the area within the district has no facilities for the sanitary treatment and disposal of sewage and is consequently contaminating and polluting the waters of San Francisco Bay. The area within the district is of strategic importance due to the proximity of Mare Island Navy Yard. The influx of Navy personnel and their families and civilian workers at the Mare Island Navy Yard has greatly aggravated the problem of sewage disposal in that area. The problem of sewage disposal is further aggravated by a lack of adequate drainage and floodwater control and the infiltration of storm and flood waters into existing sanitary sewers. Both the problem of sanitary sewage and drainage and the problem of storm water flood control are so interrelated that the special problems relating to each can only be solved by uniform administration and a uniform control plan of sewage disposal and flood control works.

The Vallejo Sanitation and Flood Control District is hereby declared to be a body corporate and politic and may do all of the following:

(a) Succession. To have perpetual succession.

(b) Suits. To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(c) Seal. To adopt a seal and alter it at pleasure.

(d) Ownership of Property. To take by grant, purchase, gift,

devise or lease, hold, use, enjoy, and to lease or dispose of real or personal property of every kind within or without the district necessary to the full exercise of its powers.

(e) Acquisition of Property. To acquire or contract to acquire lands, rights-of-way, easements, privileges or property of every kind within or without the district, and construct, maintain and operate any and all works and improvements within or outside the district necessary, convenient or proper to carry out any of the provisions, objects or purposes of this act, and to complete, extend, add to, repair, or otherwise improve any works or improvements acquired by it.

(f) Eminent Domain. To exercise the right of eminent domain, either within or outside the district, to acquire any property necessary to carry out any of the objects or purposes of the district.

(g) Sanitary Sewage Disposal Works. To acquire, construct, reconstruct, alter, own, operate, maintain and repair sewage treatment plants, including digesters, sludge heaters, sludge drying beds, effluent pumping plants, screens, clarifiers, storage ponds, control buildings, oxidizing ponds, sewage digestive systems, intercepting, collecting and outfall sewers, laterals, pipes, manholes, machinery, equipment, and all other facilities for the collection, transmission and disposition of sewage and industrial wastes, together with all works, properties or structures necessary or convenient for sewage disposal purposes. The terms "sanitary sewage disposal works," "sewage disposal works," "sanitary sewage disposal purposes" or "sewage disposal purposes" or similar terms shall include all of the works, properties, or structures necessary or convenient for sewage disposal purposes.

(h) Drainage and Flood Control Works. To construct, maintain, repair, and operate all levees, bulkheads, walls of rock or other material, pumps, dams, channels, conduits, pipes, ditches, canals, reservoirs, spreading basins, tunnels, drains, machinery and equipment necessary therefor, dredgers and all other auxiliary, incidental, necessary or convenient agencies, work or improvements that may be required to carry out, facilitate, repair, maintain or complete the same, and, in connection with any reservoirs or spreading basins, to acquire or construct improvements, including landscaping, apparatus, and equipment, to permit the incidental use of reservoirs or spreading basins for park, playground, or other recreation purposes. The terms "storm water flood control works," "drainage works," "storm water flood control purposes" and "drainage purposes" and similar terms shall mean and include all works, properties, or structures necessary or convenient for drainage and flood control purposes, and for purposes incidental thereto.

(i) Indebtedness. To incur indebtedness, and to issue bonds or other evidence of indebtedness in the manner herein provided, and to provide for the issuance of warrants of the district and the registration of any warrants not paid for want of funds and interest thereon after registration and until payment, and also to issue bonds

or other securities payable from revenues.

(j) Revenues From Revenue Producing Utilities. To prescribe, revise and collect tolls, rents or other charges for any services or facilities furnished by the district; to contract with the City of Vallejo or any other public or private agency for the collection of tolls, rents, or other charges for any facility or service furnished by the district and to provide for the collection of the tolls, rents and charges along with the collection of water charges by the City of Vallejo or any other public or private agency.

(k) Assessments. To cause assessments to be levied and collected for the purpose of paying any obligations of the district.

(*l*) Employees. To employ engineers, attorneys, assistants and other staff as may be necessary, fix their compensation and define their powers and duties, and fix and determine the amount of bond required of each employee and pay the premium on the bond. The board shall prescribe, by resolution, the compensation for each classification of employees of the district. The board may combine, eliminate, or add staff positions in its discretion. The engineer-manager may appoint or hire employees for positions created by the board.

(m) Zones. To establish and fix the boundaries of zones in the district as in this act hereinafter provided; to make transfers of money from the operation fund of the district to any special fund and to create and administer the special funds as in their discretion may seem advisable; to create and administer revolving funds to facilitate and assist in the carrying on and completing of acquisitions, works, and improvements, and to do any and all things necessary or incidental to the accomplishment of the things which are permitted to be done under this act.

(n) Contracts. To make and enter into contracts with the United States of America, the State of California, any political subdivision, county, municipality, district, agency or mandatory of the State of California or of the United States and any department, board, bureau, or commission of the State of California or the United States of America, or any person, firm, association or corporation, jointly or severally, for the acquisition of property or rights or the construction, maintenance or operation in whole or in part of any or all works or improvements provided in this act.

(o) Lease of Property. To lease or rent to or from the City of Vallejo, the County of Solano, or any public or private agency, or person, firm or corporation, any property or rights necessary, in the judgment of the board of trustees of the district, to accomplish or carry out any of the work or improvement or the maintenance thereof herein provided and under terms and conditions agreed to by the parties.

(p) Contributions. To receive and accept any and all contributions in labor, materials, or money to be applied to the works or improvements herein provided for.

SEC. 3. Section 6 of the Vallejo Sanitation and Flood Control

District Act (Chapter 17 of the Statutes of 1952, First Extraordinary Session) is amended to read:

Sec. 6. Compensation, organization and meetings of trustees.

(a) Each trustee of the district shall receive compensation for each meeting of the board of trustees attended, whether regular or special, and for attendance by a trustee of any meeting at the request of the board as its representative.

(b) The compensation for each trustee shall be one hundred dollars ($100) for each meeting of the district board. A trustee may not be compensated for more than six meetings, or six hundred dollars ($600), in any calendar month.

(c) The trustees shall elect one of their number as president of the board, one as vice president, and one as secretary, but none of these officers may receive any additional compensation for their services as such.

(d) The trustees shall establish and maintain an office within the district for the transaction of the business, at which office all books, records and papers of the district shall be kept and shall be open to inspection at all reasonable times.

(e) The trustees shall hold regular meetings at the office, at those times that the board, by resolution, prescribes. Special meetings may be called and held on written order of any two trustees. The order shall specify the business for which the special meeting is called and no other business shall be transacted at the meeting.

(f) The meetings of the board of trustees, advisory groups, or committees of the board shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(g) The finance director or the chief financial officer of the district shall be the treasurer of the district.

SEC. 4. Section 19 of the Vallejo Sanitation and Flood Control District Act (Chapter 17, Statutes of 1952 First Extraordinary Session) is amended to read:

Sec. 19. (a) The boundaries of the district may be altered and additional land may be annexed to the district if the land will be benefited thereby, and any tract of land within the district may be excluded if not benefited thereby. The procedure for the annexation and exclusion of territory shall be in accordance with Division 3 (commencing with Section 56000) of Title 5 of the Government Code.

(b) No change in the boundaries of the district may impair or affect its organization or its rights in or to property or any of its rights or privileges, or may affect, impair, or discharge any contract, obligation, lien or charge for or upon any lands in the district or for which the district was or might become liable or chargeable had the change of boundaries not been made.

(c) The district may annex land across a county boundary line but only with the consent, by resolution, of the board of supervisors of the county in which the annexed land is situated, prior to the

adoption by the board of trustees of its resolution of annexation.

(d) (1) The requisite number of petitioners required under Section 58231 of the Government Code may be, if the petitioners are landowners, that number of persons owning more than one-half of the area of land sought to be annexed or excluded or, alternatively, if there are at least 12 electors residing on the land and the petitioners are electors, that number of persons constituting a majority of the electors.

(2) The requisite number of petitioners required under Section 58238 of the Government Code shall be, if the petitioners are landowners, that number of persons owning more than one-fourth of the area of land sought to be annexed or excluded or, alternatively, if there are at least 12 electors residing on the land and the petitioners are electors, that number of persons constituting one-fourth of the electors. However, no election may be called under Section 58238 if there are less than 12 electors residing on the land, but instead the board shall determine the matter as provided in Section 58237 of the Government Code.

(e) If the district annexes land situated in a county other than Solano County, the board of supervisors, county assessor, county tax collector, and county auditor of the county in which the additional land is situated have all of the powers and duties in relation to the making, equalizing, and collection of taxes for district purposes which are granted to the same county officials of Solano County by Sections 16 and 17.

(f) The taxes of the district levied in any county other than Solano County shall be collected at the same time and in the same manner as county taxes. When collected, the amount shall be paid to the Treasurer of Solano County and shall be held by the treasurer in the fund provided for in Section 16.

SEC. 5. Section 26 of the Vallejo Sanitation and Flood Control District Act (Chapter 17 of the Statutes of 1952, First Extraordinary Session) is amended to read:

Sec. 26. Special Assessment Proceedings. (a) In addition to all other powers granted under this act, the district may acquire, construct, complete, and maintain any improvements if the improvements are authorized by special assessment proceedings or special tax proceedings, or both.

(b) The Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code), the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), and the Landscape and Lighting Act of 1972 (Division 15 (commencing with Section 22500) of the Streets and Highways Code) are applicable to the district and the powers, and duties conferred by those acts may be exercised by the district.

(c) The improvements authorized to be constructed or acquired

by this section are limited to those permitted to be constructed or acquired by the district under the provisions of this act.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 628

An act to amend Sections 17539.5 and 17539.55 of the Business and Professions Code, relating to advertising.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 17539.5 of the Business and Professions Code is amended to read:

17539.5. (a) For purposes of this section and Sections 17539.55 and 17539.6:

(1) "Broadcast" means the utilization of radio, television, home videos, movie screens, telephones, or other media which does not automatically provide the prospective consumer with a printed or written document he or she can read at leisure.

(2) "Caller" means a telephone user or end user who calls or may call an information-access service or who receives a telephonic solicitation which results in the recipient being connected to an information-access service.

(3) "Carrier" means any regional telephone operating company, interexchange carrier, or local exchange telephone company that provides telecommunications transmission services.

(4) "Incentive" means any item or service of value, however denominated, including, but not limited to, any prize, award, gift, or money, or any coupon which can be used in whole or in part to obtain a product or service.

(5) "Information provider" means a person who advertises or sells an information-access service and on whose behalf charges are billed.

(6) "Information-access service" means any telecommunications service which permits individuals to access a telephone number, and for which the caller is assessed, by virtue of placing or completing the call, a charge that is greater than, or in addition to, the charge for the transmission of the call. Information-access service includes, but is not limited to, telephone numbers with the prefix 900 or 976.

(7) "900 number" means any prefixed telephone number used for information-access service and includes, but is not limited to, telephone numbers with the prefix 900 or 976.

(8) "Prize" means any item of value given to winners in a sweepstakes who have been selected on the basis of lot or chance.

(9) "Program" means the audio message which the caller hears or receives upon placing or receiving a call and being connected to an information-access service.

(10) "Sell an information service" means to attempt to cause a caller to act in such a manner as to cause that caller to be charged for utilizing an information-access service.

(11) "Solicitation" includes all forms of solicitation for information-access services, including, but not limited to, mailings, advertisements in newspapers and magazines, advertisements broadcast by radio or television, advertisements contained in home videos or appearing on movie screens, and telephone solicitations. Solicitation does not include simple listings in telephone directories provided those listings are not accompanied by any advertising text.

(12) "Sweepstakes" means any procedure for the distribution of anything of value by lot or by chance which is not unlawful under other provisions of law including, but not limited to, the provisions of Section 320 of the Penal Code. Nothing contained in this section shall be deemed to render lawful any activity which would otherwise violate Section 320 of the Penal Code.

(b) It is unlawful for any person to engage in any of the following acts in order to encourage any caller to utilize an information-access service:

(1) Soliciting callers by use of an automatic dialing device or a live or recorded outbound telephone message.

(2) Utilizing signals or tones provided directly or indirectly by the information provider to access the information-access service.

(3) Requiring callers to call more than one 900 number or to require calling the same 900 number more than one time in order to receive goods or services represented in the initial solicitation.

(4) Utilizing a telephone number other than a 900 number from which a caller can be automatically connected to the information-access service.

(5) Soliciting callers to call a telephone number other than a 900 number, including, but not limited to, an 800 telephone number, when the caller who calls that other number will be referred to a 900 number unless all solicitations for the initial information-access program clearly and conspicuously disclose that a referral will be made and the cost to the caller for calling the 900 number to which the caller will be referred.

(6) Soliciting callers to call a number other than a 900 number, including, but not limited to, an 800 telephone number, when the caller who calls that number will be asked to accept one or more collect calls unless all solicitations clearly and conspicuously disclose that the caller will be asked to accept one or more collect calls and

the cost to the caller for accepting the collect calls. The cost shall be described as cost per minute and cost per hour.

(7) Referring a caller from one 900 number to another 900 number unless all solicitations for the initial information-access program clearly and conspicuously disclose that a referral will be made and the cost to the caller for calling the 900 number to which the caller will be referred.

(8) Advertising that the information-access service is free.

(9) Using any printing style, graphic, layout, text, color, or format which states or implies that the solicitation originates from, or was issued by or on behalf of a governmental agency, a public utility, a nonprofit organization, an insurance company, a credit reporting agency, a collection company, or a law firm unless the same is true.

(c) It is unlawful for any person to solicit or sell an information-access service unless the following information is clearly and conspicuously disclosed in all solicitations:

(1) An accurate description of the information-access service.

(2) The name, address, and non-900 telephone number of the information provider.

(3) The cost of the call which shall be disclosed as follows:

(A) If the call is billed at a fixed rate, the total cost of the call.

(B) If the call is billed on a usage sensitive basis, the cost per minute or other unit of time, and including:

(i) In broadcast solicitations the average cost of the call.

(ii) In print solicitations the average cost or length of the call; except that print solicitations directed to persons in this state shall disclose the average cost of the call.

(C) Solicitations in which the length of the program cannot reasonably be determined because the length of the program depends upon the skill of, or the selections or responses made by, the caller, shall be exempt from the cost disclosure provisions of this paragraph.

(D) Solicitations which are oral shall include a voice announcement of the cost of the call in clear and understandable language that is clearly audible and articulated at a volume equal to that used to announce the 900 number. The cost of the call shall be stated immediately prior to or immediately after the 900 number is stated.

(E) Solicitations which are visually broadcast shall include in clear, visible, easily readable, and conspicuously presented letters and numbers, set against a contrasting background, the cost of calling the 900 number. The visual disclosure of the cost of the call shall be displayed directly above, below, or adjacent to the number to be called whenever the number is displayed in the commercial. The visual disclosure of the cost of the call shall be a distinct disclosure and shall not be combined in the same paragraph with any other disclosures required to be made pursuant to this section. The lettering of the visual disclosure shall be no less than 18 scan lines high and shall be displayed for as long as the number is displayed.

Broadcast solicitations shall also include a voice announcement of the cost of the call in clear and understandable language that is clearly audible and articulated at a volume equal to that used to announce the 900 number. The cost of the call shall be stated immediately prior to or after the 900 number is stated.

(F) Solicitations which appear in print shall include in clear, visible, easily readable, and conspicuously presented letters and numbers the cost of calling the 900 number. The printed disclosure of the cost of the call shall be displayed directly above, below, or adjacent to the number. The lettering of the cost disclosure shall be in no less than 10-point type.

(4) If the information-access service is aimed at or likely to be of interest to minors, solicitations which appear in print shall contain a statement in at least the same size print as that used to disclose the 900 number, that persons under the age of 18 years should obtain parental consent before calling. If the solicitation is through a broadcast, this statement shall be of the same audibility as that used to disclose the 900 number.

(d) It shall be unlawful for any person to solicit or sell an information-access service which offers the person being solicited the opportunity to participate in a sweepstakes unless:

(1) There is available to all persons who are solicited, a free alternative method of participating which provides all participants with an equal chance of winning. No information-access service shall offer a sweepstakes to consumers in this state in which a person calling a 900 number will receive any benefit beyond that received by a person who utilizes an alternative method of entry into the sweepstakes. The free alternative method of entry shall be clearly and conspicuously disclosed in the following manner:

(A) Solicitations which are visually broadcast shall include a visual disclosure of the alternate method of entry. The disclosure that one can enter without calling the 900 number, and instructions on how one may so enter shall be displayed in close proximity to the 900 number on a static screen against a clean and contrasting background. The lettering of the visual disclosure shall be made in clear, visible, easily readable, and understandable text and shall be no less than 18 scan lines and shall be displayed for a period of time sufficient to allow a consumer to copy the information. The visual disclosure of the alternate method of entry shall be distinct and shall not be combined in the same paragraph with any other disclosures required to be made pursuant to this section. Solicitations which are broadcast orally shall include an oral disclosure of the alternate method of entry. The disclosure that one can enter for free and how one may so enter shall be made in clear and understandable language that is clearly audible and articulated at a volume equal to that used to announce the 900 number and for a period of time sufficient to allow a consumer to copy the information. The oral disclosure shall be made in close proximity to the 900 number. All broadcast solicitations shall include, in addition to the oral or visual disclosure

described above, an oral statement that no telephone call is required to enter the sweepstakes.

(B) For print solicitations, the disclosure of the existence of the alternate method of entry and detailed instructions on how one may so enter shall be made in clear, visible, and easily readable text in close proximity to the 900 number to be called. The lettering of the disclosure shall be of a size no less than the predominant type size used in the main text of the solicitation and shall not be obscured by any other printed or graphic matter in the solicitation.

(2) If the alternate method of entry is by mail, any associated fulfillment which the solicitation represents will be sent to persons who respond by mail, shall be completed within 21 days, and the solicitation may not represent that the time for fulfillment of mail-in requests is any longer than the information provider reasonably anticipates it will take to fulfill, which shall, in no event, exceed 21 days.

(3) If the alternate method of entry is by mail, and entrants in this state are required to submit a self-addressed envelope to receive any associated fulfillment which the solicitation represents will be sent to persons who respond by mail, entrants shall not be required to affix return postage to their self-addressed envelope.

(4) Minors are excluded from participation.

(5) The information provider provides a full refund to any caller who requests one upon submission by the caller of proof of payment of the telephone charges, provided that if the caller has not previously requested a refund for the same information-access service call, no proof of payment is required.

(6) The amount or value of each prize awarded is not dependent on the number of entries received.

(7) The information provider obtains unrestricted title or the right to vest title in all prizes prior to the commencement of the sweepstakes.

(8) A list of the winners of all major prizes is made available to any person requesting that list and the solicitation contains an address where a person may request a list of the winners. The names and addresses of the winners shall be available to the Attorney General upon request within 30 days after the selection of winners and shall be maintained for a period of not less than three years.

(9) All major prizes shall be awarded. Major prizes which are not claimed by those who have been solicited shall be awarded in a subsequent drawing from the names of all who responded to the solicitation but did not receive a major prize. This drawing shall take place not later than 30 days after the deadline for responding to the solicitation. For purposes of this section, a major prize is a prize with a substantial cash value.

(10) A deadline by which the recipient of the solicitation must respond is clearly and conspicuously disclosed.

(11) The disclosed deadline provides those solicited with at least two weeks within which to respond.

(12) The solicitation discloses any material restrictions or conditions which must be satisfied before the recipient is entitled to receive any prize offered.

(13) The solicitation contains a description of how the winner of each prize mentioned is selected.

(e) Solicitations made to persons in this state offering the opportunity to participate in a sweepstakes shall, with respect to each prize offered, set forth clearly, conspicuously, and in easily readable letters the odds of receiving that prize, described in whole Arabic numerals in a format such as: "1 chance in 100,000" or "1:100,000." If the odds depend upon the number of entries and the number of persons solicited is controlled by the sponsor of the promotion, the solicitation shall set forth the reasonable expectation of entries. If the odds depend upon the number of entries received and the number of persons solicited is not controlled by the sponsor of the sweepstakes, a statement to the effect that the odds depend on the number of entries received shall be sufficient. If more than one prize is offered, the odds shall be separately stated for each prize. The disclosure required to be made pursuant to this subdivision shall be made immediately adjacent to the first identification of the prize to which it relates or in a separate section entitled "Consumer Disclosure" or "Official Rules." These titles shall be printed in no less than 10-point boldface type. The consumer disclosure section shall be clearly and conspicuously disclosed in the solicitation. There shall be a statement referring the recipient of the solicitation to the consumer disclosure section in the main text of the solicitation in close proximity to the description of the prizes, and the odds shall be disclosed within the top 25 percent of the consumer disclosure section. If the consumer disclosure section does not appear on the same page as the statement referring the recipient of the solicitation to this section, the statement shall indicate where the consumer disclosure section is located. If the odds appear in the section entitled "Consumer Disclosure" or "Official Rules," there shall be a clear and conspicuous statement in the main text of the solicitation in close proximity to the description of the prizes that the odds to the recipient of obtaining the prize or prizes will be found elsewhere and the statement shall set forth where they will be found. It is not a violation of this section to reference the official rules and the odds in the same statement as long as the statement referencing the official rules and the odds is in the main text of the solicitation in close proximity to the description of the prizes. For example, a statement such as: "See official rules (on (reference to location of rules if not on same page)) for odds and other details," or a similar statement meets the requirements of this provision. This provision shall not apply to broadcast solicitations for sweepstakes in which the winners will be selected in a random drawing in which the odds depend on the number of entries received, provided that those solicitations shall disclose where the official rules are available and the official rules shall set forth the odds of winning in accordance with this

subdivision.

(f) If more than one prize is listed in a solicitation for an information-access service that offers the opportunity to participate in a sweepstakes, the prizes shall be listed in descending order of retail value.

(g) If any incentive is offered in a solicitation for an information-access service, the solicitation shall clearly and conspicuously disclose all restrictions, qualifications, and deadlines which must be complied with in order to obtain the incentive being offered.

(h) No person soliciting callers for an information-access service shall represent directly or by implication that the person being solicited is part of a significantly limited group selected to receive an incentive, unless that is true and the number of recipients who will be receiving the solicitation is clearly and conspicuously set forth in the solicitation.

(i) No person soliciting callers for an information-access service shall state or imply that the person being solicited has already been chosen to receive a prize in a sweepstakes or will receive one or more of several listed prizes, or may receive one or more of several listed prizes, unless:

(1) The disclosed deadline in the solicitation is not more than six months after the first solicitation for participation; provided, however, this subdivision shall not apply to random draw contests where the solicitation makes it clear that no participant has yet been chosen as the "winner" and the drawing date is clearly and conspicuously disclosed.

(2) No further solicitations for participation in a particular sweepstakes is disseminated after the top prize listed in the solicitation has been claimed. A drawing pursuant to paragraph (9) of subdivision (d) shall thereafter be conducted to award any unclaimed prizes.

(j) It is unlawful for any person to solicit or sell an information-access service to any person in the following manner:

(1) The solicitation offers to persons in this state who respond to the solicitation by calling a 900 number any incentive which:

(A) Requires the recipient to purchase goods or services from the information provider in order to utilize the incentive; provided, however, this subparagraph does not apply to offers where the incentive is a "cents-off" coupon which is only usable for the purchase of the offeror's own brand name product or products, the total value of the "cents-off" coupon offered is clearly and conspicuously disclosed in the offer, the total value of the "cents-off" coupon does not exceed five dollars ($5), the "cents-off" coupon is to be utilized to reduce the price of those products at retail stores in the recipient's area, and at least 60 percent of the revenue per month of the offeror is derived from the sale of the product or products being purchased without the use of the "cents-off" coupons.

(B) Requires the recipient to purchase goods or services from any

third party in order to utilize the incentive unless:

(i) The fact that a purchase or payment is required in order to utilize the incentive is disclosed in the solicitation.

(ii) A representative sample of the establishments at which the incentive may be redeemed is disclosed in the solicitation.

(iii) If the incentive entitles the recipient to save money on the purchase of goods or services, the incentive is described as a cents off, discount coupon, or similar term which clearly indicates that it is redeemable only for savings on purchases of goods or services.

(2) The solicitation states or implies that the caller is likely to receive one of the prizes offered, by representing in the solicitation that other named persons have already won the other prizes being offered in the solicitation and that the recipient of the solicitation is therefore likely to receive the prize which has not been won by the other persons named in the solicitation, unless the recipient's odds of receiving the remaining prize are clearly and conspicuously disclosed in the solicitation in close proximity to the list of the other named persons.

(k) Nothing contained in this section shall be deemed to render lawful any activity which would otherwise violate Section 17537.

(*l*) No information-access service shall offer a game of skill in which the cost of the call is billed on a usage sensitive basis and in which answers to multiple choice questions of increasing difficulty are required in order to win unless the solicitation clearly and conspicuously discloses the percentage of contestants anticipated to answer all questions correctly based on prior experience or, if the game is being operated for the first time, based on a good faith estimate.

(m) This section shall not apply to a regional telephone operating company, interexchange carrier, or local telephone company operating in those capacities, which in good faith telecommunicates an information-access program without knowledge that the program or related advertising violates any provision of this section or Section 17539.55 or Section 17539.6.

(n) Neither this section nor Section 17539.55 or 17539.6 shall apply to the California State Lottery.

SEC. 2. Section 17539.55 of the Business and Professions Code is amended to read:

17539.55. (a) It shall be unlawful to operate a sweepstakes in this state through the use of a 900 number, unless the information provider registers with the Department of Justice as provided in this section within 10 days after causing any advertisement for the sweepstakes to be directed to any person in this state.

(b) The registration shall include the following information:

(1) Each 900 number to be used in the sweepstakes.

(2) The name and address of the information provider including corporate identity, if any, and the name and address for the information provider's agent for service of process within the state.

(3) A copy of the information provider's audio text, prerecorded,

or live operator scripts.

(4) A copy of the official rules for the sweepstakes.

(5) For television, video, or any on-screen advertisements, a copy of the storyboard and videotape.

(6) For radio advertisements, a copy of the script and audio cassette recording.

(7) For print, a copy of all advertisements.

(8) For direct mail solicitations, a copy of all principal solicitations.

(9) For telephone solicitations, a copy of the script.

(10) The names of the carriers which the information provider plans to utilize to carry the 900 number calls.

(c) The information provider shall pay an annual registration fee of fifty dollars ($50) for each 900 number used for sweepstakes purposes.

(d) It shall be unlawful for any information provider that operates a sweepstakes to make reference, in any contact with the public, to the fact that the information provider is registered with the Department of Justice, as required by this section, or in any other manner imply that such registration represents approval of the sweepstakes by the Department of Justice.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 629

An act to amend Section 987.2 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 987.2 of the Penal Code is amended to read:

987.2. (a) In any case in which a person, including a person who is a minor, desires but is unable to employ counsel, and in which counsel is assigned in the superior, municipal, or justice court to represent the person in a criminal trial, proceeding, or appeal, the following assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall

be determined by the court, to be paid out of the general fund of the county:

(1) In a county or city and county in which there is no public defender.

(2) In a county of the first, second, or third class where there is no contract for criminal defense services between the county and one or more responsible attorneys.

(3) In a case in which the court finds that, because of a conflict of interest or other reasons, the public defender has properly refused.

(4) In a county of the first, second, or third class where attorneys contracted by the county are unable to represent the person accused.

(b) The sum provided for in subdivision (a) may be determined by contract between the court and one or more responsible attorneys after consultation with the board of supervisors as to the total amount of compensation and expenses to be paid, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in those cases.

(c) In counties that utilize an assigned private counsel system as either the primary method of public defense or as the method of appointing counsel in cases where the public defender is unavailable, the county, the courts, or the local county bar association working with the courts are encouraged to do all of the following:

(1) Establish panels that shall be open to members of the State Bar of California.

(2) Categorize attorneys for panel placement on the basis of experience.

(3) Refer cases to panel members on a rotational basis within the level of experience of each panel, except that a judge may exclude an individual attorney from appointment to an individual case for good cause.

(4) Seek to educate those panel members through an approved training program.

(5) Establish a cost-efficient plan to insure maximum recovery of costs pursuant to Section 987.8.

(d) In a county of the first, second, or third class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county and the courts have contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, the court shall utilize the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(e) In a county of the first, second, or third class, the court shall

first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county has created a second public defender and contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, and if the quality of representation provided by the second public defender is comparable to the quality of representation provided by the public defender, the court shall next utilize the services of the second public defender and then the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the second public defender or a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(f) Notwithstanding any other provision of this section, where an indigent defendant is first charged in one county and establishes an attorney-client relationship with the public defender, defense services contract attorney, or private attorney, and where the defendant is then charged with an offense in a second or subsequent county, the court in the second or subsequent county may appoint the same counsel as was appointed in the first county to represent the defendant when all of the following conditions are met:

(1) The offense charged in the second or subsequent county would be joinable for trial with the offense charged in the first if it took place in the same county, or involves evidence which would be cross-admissible.

(2) The court finds that the interests of justice and economy will be best served by unitary representation.

(3) Counsel appointed in the first county consents to the appointment.

(g) The county may recover costs of public defender services under Chapter 6 (commencing with Section 4750) of Title 5 of Part 3 for any case subject to Section 4750.

(h) Counsel shall be appointed to represent, in the municipal or justice court, a person who desires but is unable to employ counsel, when it appears that the appointment is necessary to provide an adequate and effective defense for the defendant.

(i) As used in this section, "county of the first or second class" means the county of the first class and county of the second class as provided by Sections 28020, 28022, and 28023 of the Government Code.

SEC. 2. Section 987.2 of the Penal Code is amended to read:

987.2. (a) In any case in which a person, including a person who is a minor, desires but is unable to employ counsel, and in which counsel is assigned in the superior, municipal, or justice court to represent the person in a criminal trial, proceeding, or appeal, the

following assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the county:

(1) In a county or city and county in which there is no public defender.

(2) In a county of the first, second, or third class where there is no contract for criminal defense services between the county and one or more responsible attorneys.

(3) In a case in which the court finds that, because of a conflict of interest or other reasons, the public defender has properly refused.

(4) In a county of the first, second, or third class where attorneys contracted by the county are unable to represent the person accused.

(b) The sum provided for in subdivision (a) may be determined by contract between the court and one or more responsible attorneys after consultation with the board of supervisors as to the total amount of compensation and expenses to be paid, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in those cases.

(c) In counties that utilize an assigned private counsel system as either the primary method of public defense or as the method of appointing counsel in cases where the public defender is unavailable, the county, the courts, or the local county bar association working with the courts are encouraged to do all of the following:

(1) Establish panels that shall be open to members of the State Bar of California.

(2) Categorize attorneys for panel placement on the basis of experience.

(3) Refer cases to panel members on a rotational basis within the level of experience of each panel, except that a judge may exclude an individual attorney from appointment to an individual case for good cause.

(4) Seek to educate those panel members through an approved training program.

(5) Establish a cost-efficient plan to insure maximum recovery of costs pursuant to Section 987.8.

(d) In a county of the first, second, or third class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county and the courts have contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, the court shall utilize the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of a county-contracted attorney after making a finding of good cause and

stating the reasons therefor on the record.

(e) In a county of the first, second, or third class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county has created a second public defender and contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, and if the quality of representation provided by the second public defender is comparable to the quality of representation provided by the public defender, the court shall next utilize the services of the second public defender and then the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the second public defender or a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(f) In any case in which counsel is assigned as provided in subdivision (a), that counsel appointed by the court and any court-appointed licensed private investigator shall have the same rights and privileges to information as the public defender and the public defender investigator. It is the intent of the Legislature in enacting this subdivision to equalize any disparity that exists between the ability of private, court-appointed counsel and investigators, and public defenders and public defender investigators, to represent their clients. This subdivision is not intended to grant to private investigators access to any confidential Department of Motor Vehicles' information not otherwise available to them. This subdivision is not intended to extend to private investigators the right to issue subpoenas.

(g) Notwithstanding any other provision of this section, where an indigent defendant is first charged in one county and establishes an attorney-client relationship with the public defender, defense services contract attorney, or private attorney, and where the defendant is then charged with an offense in a second or subsequent county, the court in the second or subsequent county may appoint the same counsel as was appointed in the first county to represent the defendant when all of the following conditions are met:

(1) The offense charged in the second or subsequent county would be joinable for trial with the offense charged in the first if it took place in the same county, or involves evidence which would be cross-admissible.

(2) The court finds that the interests of justice and economy will be best served by unitary representation.

(3) Counsel appointed in the first county consents to the appointment.

(h) The county may recover costs of public defender services

under Chapter 6 (commencing with Section 4750) of Title 5 of Part 3 for any case subject to Section 4750.

(i) Counsel shall be appointed to represent, in the municipal or justice court, a person who desires but is unable to employ counsel, when it appears that the appointment is necessary to provide an adequate and effective defense for the defendant.

(j) As used in this section, "county of the first, second, or third class" means the county of the first class, county of the second class, and county of the third class as provided by Sections 28020, 28022, 28023, and 28024 of the Government Code.

SEC. 3. Section 2 of this bill incorporates amendments to Section 987.2 of the Penal Code proposed by both this bill and AB 1126. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 987.2 of the Penal Code, and (3) this bill is enacted after AB 1126, in which case Section 1 of this bill shall not become operative.

CHAPTER 630

An act to add Section 8670.36.5 to the Government Code, and to amend Sections 25270.5, 25503.5, and 25534 of, to add Sections 25299.6 and 25503.4 to, and to repeal and add Section 25150.5 of, the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 8670.36.5 is added to the Government Code, to read:

8670.36.5. An operator of a marine facility who is required to prepare an interim marine facility oil spill contingency plan or a marine facility oil spill contingency plan pursuant to this article may, in meeting that requirement, use the format adopted pursuant to Section 25503.4 of the Health and Safety Code.

SEC. 2. Section 25150.5 of the Health and Safety Code is repealed.

SEC. 3. Section 25150.5 is added to the Health and Safety Code, to read:

25150.5. On or before July 1, 1995, the department shall revise any standard or regulation it has adopted that requires the preparation of a contingency plan, as that term is defined in Section 66260.10 of Title 22 of the California Code of Regulations, to allow the person preparing the contingency plan to use the format adopted pursuant to Section 25503.4, if that person elects to use that format.

SEC. 4. Section 25270.5 of the Health and Safety Code is amended to read:

25270.5. (a) By January 1, 1991, the board shall adopt a schedule

for the inspection of tank facilities subject to this chapter. In adopting this schedule, the board shall give special attention to those tank facilities which are near navigable waters, potable water supplies, or sensitive ecosystems, such as wetlands and marshes.

(b) Each regional board shall conduct periodic inspections of either each storage tank or a representative sampling of the storage tanks at each tank facility in accordance with the schedule determined by the board pursuant to subdivision (a) for compliance with the spill prevention and countermeasure plan.

(c) Except as provided in subparagraph (B) of paragraph (2) of subdivision (a) of Section 25270.3, each owner or operator of a storage tank at a tank facility subject to this chapter shall prepare a spill prevention control and countermeasure plan prepared in accordance with the guidelines contained in Part 112 of Title 40 of the Code of Federal Regulations. In meeting the requirement to prepare a spill prevention control and countermeasure plan, the owner or operator may, if he or she elects to do so, use the format adopted pursuant to Section 25503.4. Each owner or operator specified in this subdivision shall conduct periodic inspections of the storage tanks to assure compliance with Section 112.7 of Title 40 of the Code of Federal Regulations. In implementing the spill prevention control and countermeasure plan, each owner or operator specified in this subdivision shall fully comply with the latest version of the regulations contained in Part 112 of Title 40 of the Code of Federal Regulations.

(d) The owner or operator of a tank facility specified in subparagraph (B) of paragraph (2) of subdivision (a) of Section 25270.3 shall take all of the following actions:

(1) Conduct daily visual inspections of any tank storing petroleum.

(2) Allow the regional board to conduct periodic inspections of the tank facility.

(3) Install a secondary means of containment for the entire contents of the largest tank at the tank facility, plus sufficient space for precipitation, if the regional board determines this installation is necessary for the protection of the waters of the state.

SEC. 5. Section 25299.6 is added to the Health and Safety Code, to read:

25299.6. An owner or operator who is required to prepare an accident or spill prevention plan or response plan pursuant to this chapter or pursuant to an underground storage tank ordinance adopted by a city or county may, if the owner or operator elects to do so, use the format adopted pursuant to Section 25503.4.

SEC. 6. Section 25503.4 is added to the Health and Safety Code, to read:

25503.4. (a) The office shall adopt a format that allows persons subject to two or more of the following requirements to meet those requirements in one document:

(1) The business plan required by this chapter.

(2) The risk management and prevention program required by Section 25534.

(3) The contingency plan required by Division 4.5 (commencing with Section 66001) of Title 22 of the California Code of Regulations and by Part 262 (commencing with Section 262.10), Part 264 (commencing with Section 264.1), or Part 265 (commencing with Section 265.1) of Title 40 of the Code of Federal Regulations.

(4) The spill prevention control and countermeasure plan required by Section 25270.5 and by Part 112 (commencing with Section 112.1) or by Part 1510 (commencing with Section 1510.1) of Title 40 of the Code of Federal Regulations.

(5) Any accident or spill prevention plan or response plan required by Chapter 6.7 (commencing with Section 25280) or by regulations adopted pursuant to that chapter or required by an underground storage tank ordinance adopted by a city or county.

(6) The interim marine facility oil spill contingency plan required by Section 8670.29 of the Government Code and the marine facility oil spill contingency plan required by Section 8670.31 of the Government Code.

(b) The format required by subdivision (a) shall be organized as follows:

(1) A central element that will enable persons using the format to report information and data common to all of the requirements described in subdivision (a).

(2) Appendices that will contain the additional information unique to each individual requirement described in subdivision (a).

(c) The office shall adopt the format required by subdivision (a) in consultation with administering agencies and the Information Management Subcommittee of the Chemical Emergency Planning and Response Commission and in cooperation with the State Water Resources Control Board, the Department of Fish and Game, and the department. The adoption of the format is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall be completed by January 1, 1995. To the extent feasible, and within the limits of budgetary constraints, the office, the State Water Resources Control Board, the Department of Fish and Game, and the department shall convene workshops and other public meetings to obtain public assistance on the development of the format.

SEC. 7. Section 25503.5 of the Health and Safety Code is amended to read:

25503.5. (a) Any business, except as provided in subdivisions (b) and (c), which handles a hazardous material or a mixture containing a hazardous material which has a quantity at any one time during the reporting year equal to, or greater than, a total weight of 500 pounds, or a total volume of 55 gallons, or 200 cubic feet at standard temperature and pressure for compressed gas, or, if the substance is a radioactive material which is handled in quantities for which an emergency plan is required to be adopted pursuant to Part 30

(commencing with Section 30.1), Part 40 (commencing with Section 40.1), or Part 70 (commencing with Section 70.1) of, Chapter 10 of Title 10 of the Code of Federal Regulations (54 Federal Register 14051), or pursuant to any regulations adopted by the state in accordance with those regulations, shall establish and implement a business plan for emergency response to a release or threatened release of a hazardous material in accordance with the standards in the regulations adopted pursuant to Section 25503. In meeting the requirements of this subdivision, a business may, if it elects to do so, use the format adopted pursuant to Section 25503.4.

(b) (1) Oxygen and nitrous oxide, ordinarily maintained by a physician, dentist, podiatrist, veterinarian, or pharmacist, at his or her office or place of business, stored at each office or place of business in quantities of not more than 1,000 cubic feet of each material at any one time, are exempt from this section and from Section 25505. The administering agency may require a one-time inventory of these materials for a fee not to exceed fifty dollars ($50) to pay for the costs incurred by the agency in processing the inventory forms.

(2) (A) Lubricating oil is exempt from the requirements of this section and Sections 25505 and 25509, for a single business facility, if the total volume of each type of lubricating oil handled at that facility does not exceed 55 gallons and the total volume of all types of lubricating oil handled at that facility does not exceed 275 gallons, at any one time.

(B) For purposes of this paragraph, "lubricating oil" means any oil intended for use in an internal combustion crankcase, or the transmission, gearbox, differential, or hydraulic system of an automobile, bus, truck, vessel, plane, heavy equipment, or other machinery powered by an internal combustion or electric powered engine. "Lubricating oil" does not include used oil, as defined in subdivision (a) of Section 25250.1.

(c) (1) Hazardous material contained solely in a consumer product for direct distribution to, and use by, the general public is exempt from the business plan requirements of this chapter unless the administering agency has found, and has provided notice to the business handling the product, that the handling of certain quantities of the product requires the submission of a business plan, or any portion thereof, in response to public health, safety, or environmental concerns.

(2) In addition to the authority specified in paragraph (4), the administering agency may, in exceptional circumstances, following notice and public hearing, exempt from the inventory provisions of this chapter any hazardous substance specified in subdivision (k) of Section 25501, if the administering agency finds that the hazardous substance would not pose a present or potential danger to the environment or to human health and safety if the hazardous substance was released into the environment. The administering agency shall specify in writing the basis for granting any exemption

under this paragraph. The administering agency shall send a notice to the office within five days of the effective date of any exemption granted pursuant to this paragraph.

(3) The administering agency, upon application by a handler, may, exempt a handler under the conditions it deems proper from any portion of the business plan upon a written finding that the exemption would not pose a significant present or potential hazard to human health or safety or to the environment or affect the ability of the administering agency and emergency rescue personnel to effectively respond to the release of a hazardous material, and that there are unusual circumstances justifying this exemption. The administering agency shall specify in writing the basis for any exemption under this paragraph.

(4) The administering agency upon application by a handler may exempt a hazardous material from the inventory provisions of this chapter upon proof that the material does not pose a significant present or potential hazard to human health and safety or to the environment if released into the workplace or environment. The administering agency shall specify in writing the basis for any exemption under this paragraph.

(5) An administering agency shall exempt a business operating a farm for purposes of cultivating the soil or raising or harvesting any agricultural or horticultural commodity from filing the information in the business plan required by subdivisions (b) and (c) of Section 25504 if all of the following requirements are met:

(A) The handler annually provides the inventory of information required by Section 25509 to the county agricultural commissioner before January 1 of each year.

(B) Each building in which hazardous materials subject to this chapter are stored is posted with signs, in accordance with regulations which the office shall adopt, which provide notice of the storage of any of the following:

(i) Pesticides.

(ii) Petroleum fuels and oil.

(iii) Types of fertilizers.

(C) Each county agricultural commissioner forwards the inventory to the administering agency within 30 days after receiving the inventory.

(d) The administering agency shall provide all information obtained from completed inventory forms, upon request, to emergency rescue personnel on a 24-hour basis.

(e) The administering agency shall adopt procedures to provide for public input when approving any applications submitted pursuant to paragraph (3) or (4) of subdivision (c).

SEC. 8. Section 25534 of the Health and Safety Code is amended to read:

25534. (a) The administering agency shall make a preliminary determination whether there is a significant likelihood that the handler's use of an acutely hazardous material may pose an acutely

hazardous materials accident risk.

(1) If the administering agency determines that there is a significant likelihood of risk pursuant to this subdivision, it shall require the handler to prepare and to submit an RMPP in accordance with a timetable based on the priority ranking established in subdivision (b).

(2) If the administering agency determines that there is not a significant likelihood of risk pursuant to this subdivision, it may require the preparation and submission of an RMPP, but need not do so if it determines that the likelihood of an acutely hazardous materials accident risk is remote.

(3) If the administering agency determines that an economic poison, as defined in Section 12753 of the Food and Agricultural Code, used on a farm or nursery may pose a risk pursuant to this subdivision, the administering agency shall first consult with the Department of Food and Agriculture or the county agricultural commissioner to evaluate whether the current RMPP is adequate in relation to the risk. This paragraph does not prohibit, or limit the authority of, an administering agency to conduct its duties under this article.

(b) The administering agency shall rank each use of an acutely hazardous material identified pursuant to paragraph (1) of subdivision (a) in terms of the relative risks associated with its use, should an acutely hazardous materials accident occur. The estimation of the relative risks posed by the use of an acutely hazardous material shall be based on worst case assumptions regarding the quantity and rate of release of the acutely hazardous material, air dispersion, toxicity, meteorological conditions, and other pertinent parameters. Based on the estimate of relative risks, the administering agency shall establish a timetable for the submission of the RMPP for the use of the acutely hazardous material.

(c) The RMPP shall be prepared within 12 months following the request made by the administering agency pursuant to this section. The RMPP shall include all of the following elements:

(1) A description of each accident involving acutely hazardous materials which has occurred at the business or facility within three years from the date of the request made pursuant to subdivision (a), together with a description of the underlying causes of the accident and the measures taken, if any, to avoid a recurrence of a similar accident.

(2) A report specifying the nature, age, and condition of the equipment used to handle acutely hazardous materials at the business or facility and any schedules for testing and maintenance.

(3) Design, operating, and maintenance controls which minimize the risk of an accident involving acutely hazardous materials.

(4) Detection, monitoring, or automatic control systems to minimize potential acutely hazardous materials accident risks.

(5) A schedule for implementing additional steps to be taken by

the business, in response to the findings of the assessment performed pursuant to subdivision (d), to reduce the risk of an accident involving acutely hazardous materials. These actions may include any of the following:

(A) Installation of alarm, detection, monitoring, or automatic control devices.

(B) Equipment modifications, repairs, or additions.

(C) Changes in the operations, procedures, maintenance schedules, or facility design.

(6) Auditing and inspection programs designed to allow the handler to confirm that the RMPP is effectively carried out.

(7) Recordkeeping procedures for the RMPP.

(d) The RMPP shall be based upon an assessment of the processes, operations, and procedures of the business, and shall consider all of the following:

(1) The results of a hazard and operability study which identifies the hazards associated with the handling of an acutely hazardous material due to operating error, equipment failure, and external events, which may present an acutely hazardous materials accident risk.

(2) For the hazards identified in the hazard and operability studies, an offsite consequence analysis which, for the most likely hazards, assumes pessimistic air dispersion and other adverse environmental conditions and which includes a clearly prepared map noting the location of the facility which shows the populations considered pursuant to Section 25534.1 and the zones of vulnerability, including the levels of expected exposure in each zone.

(e) The business shall submit to the administering agency any additional supporting technical information deemed necessary by the administering agency to clarify information submitted pursuant to subdivision (c).

(f) A handler shall maintain all records concerning an RMPP for a period of at least five years.

(g) The RMPP shall identify, by title, all personnel at the business who are responsible for carrying out the specific elements of the RMPP, and their respective responsibilities, and the RMPP shall include a detailed training program to ensure that those persons are able to implement the RMPP.

(h) The handler shall review the RMPP, and shall make necessary revisions to the RMPP at least every three to five years, as determined by the administering agency, but, in any event, within 60 days following a modification which would materially affect the handling of an acutely hazardous material.

(i) Any person who handles acutely hazardous materials and who owns or operates two or more business facilities which are substantially identical may prepare a single generic RMPP applicable to all those facilities if the handling of the acutely hazardous materials is substantially similar at all of those facilities.

(j) The RMPP, and any revisions required by subdivision (h), shall

be certified as complete by a qualified person and the facility operator.

(k) Except as specified in subdivision (d) of Section 25535, the handler shall implement all activities and programs specified in the RMPP within one year following the certification made pursuant to subdivision (j). Implementation of the RMPP shall include carrying out all operating, maintenance, monitoring, inventory control, equipment inspection, auditing, recordkeeping, and training programs as required by the RMPP. The administering agency may grant an extension of this deadline upon a showing of good cause.

(*l*) The Office of Emergency Services shall adopt, and publish for distribution, guidelines for the preparation and submission of an RMPP. In preparing the guidelines for hazard and operability studies, the office shall, at a minimum, base its procedural recommendations on those set forth in the 1985 Guidelines for Chemical Hazard Evaluation Procedures, prepared by the Center for Chemical Process Safety of the American Institute of Chemical Engineers.

(m) A handler who is required to prepare and submit an RMPP pursuant to this article may, if the handler elects to do so, use the format adopted pursuant to Section 25503.4.

CHAPTER 631

An act to amend Section 18028 of the Health and Safety Code, relating to commercial coaches.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 18028 of the Health and Safety Code is amended to read:

18028. (a) The department may adopt regulations for the construction of commercial coaches and special purpose commercial coaches, and of manufactured homes and mobilehomes that are not subject to the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C. Sec. 5401 et seq.) that it determines are reasonably necessary to protect the health and safety of the occupants and the public.

(b) Requirements for the construction, alteration, or conversion of commercial coaches shall be those contained, with reasonably necessary additions thereto, or deletions therefrom, as adopted by department regulations, in all of the following:

(1) The 1991 Edition of the Uniform Building Code, published by the International Conference of Building Officials.

(2) The 1993 Edition of the National Electrical Code, published by

the National Fire Protection Association.

(3) The 1991 Edition of the Uniform Mechanical Code, published jointly by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials.

(4) The 1991 Edition of the Uniform Plumbing Code, published by the International Association of Plumbing and Mechanical Officials.

(c) The department shall, on or after January 1, 1994, adopt by regulations the most recent editions of the codes specified in subdivision (b) within one year from their publication date, with appropriate additions or deletions. The requirements promulgated by the department pursuant to this section shall only apply to the construction, alteration, and conversion of commercial coaches and not to the use or operation thereof.

(d) No municipality shall prohibit the use of a commercial coach that bears a valid decal and insignia, based on the date the insignia was issued.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 632

An act to amend Sections 206 and 237 of the Code of Civil Procedure, relating to juries.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 206 of the Code of Civil Procedure is amended to read:

206. (a) Prior to discharging the jury from the case, the judge in a criminal action shall provide the notice required by subdivision (b) of Section 237 and shall inform the jurors that they have an absolute right to discuss or not to discuss the deliberation or verdict with anyone. The judge shall also inform the jurors of the provisions set forth in subdivisions (b), (c), and (d).

(b) Following the discharge of the jury in a criminal case, the defendant, or his or her attorney or representative, or the prosecutor, or his or her representative, may discuss the jury

deliberation or verdict with a member of the jury, provided that the juror consents to the discussion and that the discussion takes place at a reasonable time and place.

(c) Any unreasonable contact with a juror by the defendant, or his or her attorney or representative, or by the prosecutor, or his or her representative, without the juror's consent shall be reported to the trial judge forthwith.

(d) Any violation of this section shall be considered a violation of a lawful court order and shall be subject to reasonable monetary sanctions in accordance with Section 177.5 of the Code of Civil Procedure.

(e) Nothing in the section shall prohibit a peace officer from investigating an allegation of criminal conduct.

(f) Notwithstanding Section 237, a defendant or defendant's counsel may, following final adjudication of a criminal proceeding, request that the court provide personal juror information within the court's records necessary for the defendant to communicate with jurors for the purpose of developing issues on appeal or any other lawful purpose. This information may include jurors' names, addresses, and telephone numbers.

Pursuant to this subdivision, the court shall provide the information requested to the defendant's counsel or any agent of the defendant's counsel but may limit dissemination as provided under subdivision (d) of Section 237.

SEC. 2. Section 237 of the Code of Civil Procedure is amended to read:

237. (a) The names of qualified jurors drawn from the qualified juror list for the superior court shall be made available to the public upon request unless the court determines, pursuant to subdivision (b), that a compelling governmental interest requires that this information should be kept confidential or its use limited in whole or in part.

(b) At the conclusion of a criminal jury proceeding, the court may, upon a juror's request, motion of counsel, or on its own motion, order that all or part of the court's record of personal juror identifying information be conditionally sealed upon finding that a compelling governmental interest warrants this action. Prior to discharging the jury from the case, the judge in a criminal action shall notify the jurors of the right of any juror to request sealing of personal juror identifying information pursuant to this section. For purposes of this section, "compelling governmental interest" includes, but is not limited to, protecting jurors from physical harm or the threat of physical harm.

(c) Any person may petition the court for access to these records and, in the absence of an express finding of continuing risk, the records shall be made available. The court shall provide notice of the petition and the time and place of the hearing thereon at least 10 days prior to the date of the hearing to each affected former juror by personal service or by first-class mail, addressed to the last known

address of the former juror as shown in the records of the court. Any affected former juror may appear in person or by counsel to protest the granting of the petition. A former juror who wishes to appear at the hearing to oppose the unsealing of the personal juror identifying information may request the court to close the hearing in order to protect the former juror's anonymity.

(d) The court may limit access to records sealed under subdivision (b) to the defendant, the defendant's counsel, or the defendant's investigator for the purpose of developing issues of appeal or for any other lawful purpose. The court may require agreement that the defendant, defendant's counsel, or defendant's investigator not divulge jurors' identities or identifying information to others.

(e) Any court employee who has legal access to juror information sealed under subdivision (b), who knowingly and in violation of a court order issued pursuant to subdivision (b) or (d), discloses the information shall be guilty of a misdemeanor.

(f) Any person who intentionally solicits another to unlawfully access or disclose juror information contained in records sealed under subdivision (b), knowing that the records have been sealed, or who knowing that the information was unlawfully secured, intentionally discloses it to another person shall be guilty of a misdemeanor.

CHAPTER 633

An act to add Section 44011.1 to the Health and Safety Code, and to amend Section 6700.2 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 44011.1 is added to the Health and Safety Code, to read:

44011.1. For purposes of Section 44011, the term "registered within an area designated for program coverage" includes any vehicle registered pursuant to the Vehicle Code in this state when the registered owner's mailing or residence address is not located within this state, or when the address at which the vehicle is garaged is not located within this state.

SEC. 2. Section 6700.2 of the Vehicle Code is amended to read:

6700.2. (a) Notwithstanding Section 4000.4, subdivision (a) of Section 6700, or Section 6702, a nonresident daily commuter may operate a motor vehicle on the highways of this state only if all of the following conditions are met:

(1) The motor vehicle is a passenger vehicle or a commercial vehicle of less than 6,000 pounds unladen weight with not more than

two axles of the type commonly referred to as a pickup truck.

(2) The motor vehicle is used regularly to transport passengers on the highways of this state principally between, and to and from, the place of residence in a contiguous state and the place of employment in this state by the owner of the motor vehicle and for no other business purpose.

(3) The motor vehicle is not used in the course of a business within this state, including the transportation of property other than incidental personal property between, and to or from, the place of residence in a contiguous state and the place of employment of the motor vehicle owner in this state.

(b) The exception to registration of a motor vehicle under the conditions specified in this section does not supersede any other exception to registration under other conditions provided by law.

(c) This section does not apply to a resident of foreign country.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 634

An act to amend Section 5239 of the Corporations Code, relating to corporations.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 5239 of the Corporations Code is amended to read:

5239. (a) There shall be no personal liability to a third party for monetary damages on the part of a volunteer director or volunteer executive officer of a nonprofit corporation subject to this part, caused by the director's or officer's negligent act or omission in the performance of that person's duties as a director or officer, if all of the following conditions are met:

(1) The act or omission was within the scope of the director's or executive officer's duties.

(2) The act or omission was performed in good faith.

(3) The act or omission was not reckless, wanton, intentional, or

grossly negligent.

(4) Damages caused by the act or omission are covered pursuant to a liability insurance policy issued to the corporation, either in the form of a general liability policy or a director's and officer's liability policy, or personally to the director or executive officer. In the event that the damages are not covered by a liability insurance policy, the volunteer director or volunteer executive officer shall not be personally liable for the damages if the board of directors of the corporation and the person had made all reasonable efforts in good faith to obtain available liability insurance.

(b) "Volunteer" means the rendering of services without compensation. "Compensation" means remuneration whether by way of salary, fee, or other consideration for services rendered. However, the payment of per diem, mileage, or other reimbursement expenses to a director or executive officer does not affect that person's status as a volunteer within the meaning of this section.

(c) "Executive officer" means the president, vice president, secretary, or treasurer of a corporation, or such other individual who serves in like capacity, who assists in establishing the policy of the corporation.

(d) Nothing in this section shall limit the liability of the corporation for any damages caused by acts or omissions of the volunteer director or volunteer executive officer.

(e) This section does not eliminate or limit the liability of a director or officer for any of the following:

(1) As provided in Section 5233 or 5237.

(2) In any action or proceeding brought by the Attorney General.

(f) Nothing in this section creates a duty of care or basis of liability for damage or injury caused by the acts or omissions of a director or officer.

(g) This section is only applicable to causes of action based upon acts or omissions occurring on or after January 1, 1988.

(h) As used in this section as applied to nonprofit public benefit corporations which have an annual budget of less than twenty-five thousand dollars ($25,000) and that are exempt from federal income taxation under Section 501 (c) (3) of the Internal Revenue Code, the condition of making "all reasonable efforts in good faith to obtain available liability insurance" shall be satisfied by the corporation if it makes at least one inquiry per year to purchase a general liability insurance policy and that insurance was not available at a cost of less than 5 percent of the previous year's annual budget of the corporation. If the corporation is in its first year of operation, this subdivision shall apply for as long as the budget of the corporation does not exceed twenty-five thousand dollars ($25,000) in its first year of operation.

An inquiry pursuant to this subdivision shall obtain premium costs for a general liability policy with an amount of coverage of at least five hundred thousand dollars ($500,000).

CHAPTER 635

An act to add Sections 25819, 25819.1, and 25819.2 to the Health and Safety Code, relating to radioactive materials, and making an appropriation therefor.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 25819 is added to the Health and Safety Code, to read:

25819. The department shall require a licensee or an applicant for a license pursuant to Section 25815 to receive, possess, or transfer radioactive materials, or devices or equipment utilizing radioactive materials, to provide a financial surety to ensure performance of its obligations under this chapter. The department shall establish, by regulation, the amount and type of financial surety that is required to be provided in order to provide for maximum protection of the public health and safety and the environment. The financial surety shall be in the form of surety bonds, deposits of government securities, escrow accounts, lines of credit, trust funds, credit insurance, or any other equivalent financial surety arrangement acceptable to the department. The department shall adopt the regulations in accordance with, but not limited to, the following criteria:

(a) Consideration of the need for, and scope of, any decontamination, decommissioning, reclamation, or disposal activities required to protect the public health and safety and the environment.

(b) Estimates of the costs of the required decontamination, decommissioning, reclamation, or disposal.

(c) The costs of long-term maintenance and surveillance, if required.

(d) Consideration of the appropriateness of specific requirements imposed in the financial assurance regulations adopted by the Nuclear Regulatory Commission, including, but not limited to, the minimum levels of financial assurance required to be provided by different categories of facilities, and the categories of facilities which are exempted from the requirement to provide a financial surety.

SEC. 2. Section 25819.1 is added to the Health and Safety Code, to read:

25819.1. (a) The department shall deposit all money received from a financial surety provided pursuant to Section 25819 in the Financial Surety Account, which is hereby created in the Radiation Control Fund.

(b) Notwithstanding Section 13340 of the Government Code, the money in the Financial Surety Account is hereby continuously

appropriated to the department for expenditure only for the decontamination, decommissioning, reclamation, and disposal of radioactive materials, and for long-term maintenance and surveillance for the protection of the public health and safety and the environment, in accordance with subdivision (e), with regard to the facility or operations of the licensee who provided the financial surety.

(c) The department may not expend the money in the Financial Surety Account for normal operating expenses of the department.

(d) The department shall, by regulation, establish a procedure whereby a licensee may be refunded the amount of the financial surety provided by the licensee in excess of any amounts expended by the department and any amounts that are required to be retained to cover the costs of long-term maintenance and surveillance pursuant to subdivision (b), with regard to that licensee's facility or operations. The regulations shall specify that the refund may be received only after the department has determined that the licensee has fully satisfied all of its obligations under its license, and all other obligations which the regulations require to be satisfied before the licensee may receive a refund.

(e) If the department finds that a radioactive materials licensee is unable to, or is unwilling to, conduct any decontamination, decommissioning, reclamation, disposal, or long-term maintenance and surveillance that may be necessary, the department shall issue an order directing any action and corrective measures it finds necessary to protect the public health and safety and the environment. The department may undertake, or contract for the undertaking of, any actions or corrective measures which the licensee fails to satisfactorily complete, and may expend the amount of the financial surety provided by the licensee to pay the costs of those actions and corrective measures.

SEC. 3. Section 25819.2 is added to the Health and Safety Code, to read:

25819.2. (a) The department shall require, as a condition of issuing a license to receive, possess, or transfer radioactive materials, or devices or equipment utilizing radioactive materials, that the licensee take corrective action with regard to all contamination that results from the handling, use, storage, or transportation of radioactive materials at the licensee's facility regardless of when the contamination commenced at the facility.

(b) Any corrective action required pursuant to this section shall require that corrective action be taken beyond the facility boundary if necessary to protect human health and safety or the environment, unless the licensee demonstrates to the satisfaction of the department that, despite the licensee's best efforts, the licensee is unable to obtain the necessary permission to undertake the corrective action.

(c) When corrective action cannot be completed prior to issuance of the license, the license shall contain schedules of compliance for

corrective action and assurances of financial responsibility for completing the corrective action.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 636

An act to add Chapter 27.5 (commencing with Section 22780) to Division 8 of the Business and Professions Code, relating to commercial mail.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 27.5 (commencing with Section 22780) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 27.5. COMMERCIAL MAIL RECEIVING AGENCY

22780. (a) A commercial mail receiving agency shall not accept a Postal Service Form 1583 until positive identification has been established for the person filing the form. For purposes of this section, positive identification means any one of the following:

(1) Driver's license.

(2) State identification card.

(3) Armed forces identification card.

(4) Employment identification card which contains the bearer's signature and photograph.

(5) Any similar documentation which provides the agency with reasonable assurance of the identity of the filer.

(b) A commercial mail receiving agency shall maintain a copy of any Postal Service Form 1583 filed with the United States Postal Service. Upon the request of any law enforcement agency conducting an investigation, the commercial mail receiving agency shall make available to that law enforcement agency for purposes of that investigation and copying, its copy of the Postal Service Form 1583.

(c) A violation of this chapter is an infraction punishable by a fine

of not less than one hundred dollars ($100) for the first offense, and a fine of not less than five hundred dollars ($500) for each subsequent offense.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 637

An act to amend Section 51220.5 of the Education Code, relating to parenting education.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 51220.5 of the Education Code is amended to read:

51220.5. (a) The Legislature finds and declares the following:

(1) The family is our most fundamental social institution and the means by which we care for, prepare, and train our children to be productive members of society.

(2) Social research shows increasingly that the disintegration of the family is a major cause of increased welfare enrollment, child abuse and neglect, juvenile delinquency, and criminal activity.

(3) The lack of knowledge of parenting skills and the lack of adequate preparation to assume parental responsibilities are not only major causes of family disintegration, but also contribute substantially to the disastrous consequences of teen pregnancy.

(4) Because the state government bears much of the economic and social burden associated with the disintegration of the family in California, the state has a legitimate and vital interest in adequately preparing its residents for parenthood.

(b) The Legislature recognizes that the public education system is the most efficient and effective means to educate the populace on a large-scale basis, and intends, therefore, to use the public education system to ensure that each California resident has an opportunity to acquire knowledge of parenting skills prior to becoming a parent. That knowledge should include, at a bare minimum, all of the following:

(1) Child development and growth.
(2) Effective parenting.
(3) Prevention of child abuse.
(4) Nutrition.
(5) Household finances and budgeting.
(6) Personal and family interaction and relations.
(7) Methods to promote self-esteem.
(8) Effective decisionmaking skills.
(9) Family and individual health.

(c) Commencing with the 1995–96 fiscal year, the adopted course of study for grade 7 or 8 shall include the equivalent content of a one-semester course in parenting skills and education. All pupils entering grade 7 on or after July 1, 1995, shall be offered that course or its equivalent content during grade 7 or 8, or both. On or before January 1, 1995, the State Department of Education shall supply, to each school district that includes a grade 7 or 8, a sample curriculum suitable either for implementation as a stand-alone one-semester course or for incorporation within identified existing required or optional courses, with content designed to develop a knowledge of topics including, but not limited to, all of the following:

(1) Child growth and development.
(2) Parental responsibilities.
(3) Household budgeting.
(4) Child abuse and neglect issues.
(5) Personal hygiene.
(6) Maintaining healthy relationships.
(7) Teen parenting issues.
(8) Self-esteem.

A district that implements the curriculum set forth in this subdivision in a stand-alone required course may exempt a pupil from the course if the pupil requests the exemption and satisfactorily demonstrates mastery of the course content. The district shall determine the method by which a pupil may demonstrate this mastery.

(d) Commencing with the 1993–94 fiscal year, community college districts may offer, to interested individuals, noncredit fee-supported courses in parenting skills and education as described in subdivision (c).

(e) This section is not intended to replace existing courses that accomplish the intent of this section. School districts may meet the requirements of this section with existing courses of study offered in any of grades 6 to 9, inclusive, that includes the course contents identified in subdivision (c). When the parenting skills and education curriculum is incorporated within courses other than consumer and home economics courses, these courses are not subject to the curricular standards specified in Section 2 of Chapter 775 of the Statutes of 1989 or in the consumer and home economics education model performance standards and framework. Teachers of courses other than consumer and home economics that

incorporate parenting skills and education are not required to meet the qualifications specified for teachers of consumer and home economics.

(f) This section shall become operative only if a funding source is identified by the Superintendent of Public Instruction for the purposes of this section on or before January 1, 1995.

(g) The Superintendent of Public Instruction shall identify the funding source for this section from existing resources or private resources, or both, that may be available for the purposes of this section. The superintendent shall notify school districts when sufficient funds have been identified and are allocated to cover all costs relating to the operation of this section.

CHAPTER 638

An act to amend Section 18210 of the Financial Code, relating to industrial loan companies.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 18210 of the Financial Code is amended to read:

18210. (a) Except as provided in Sections 18205.5 and 18209 and subject to subdivisions (b) and (d), an industrial loan company shall not make any loan or purchase or discount any note secured primarily by real property unless the loan or other obligation is repayable in substantially equal weekly, semimonthly, monthly, or quarterly installments during its term, which shall not exceed 30 years and 30 days from the date the loan or other obligation is made or acquired by the company. However, an industrial loan company may make loans secured by first trust deeds on real property containing single family, or one to four residential, units provided that the repayment period for each loan does not exceed 40 years and 30 days from the date the loan is made by the company. All loans with repayment periods in excess of 30 years and 30 days shall not exceed in the aggregate 5 percent of all outstanding loans and obligations of the company.

(b) Any consumer loan or any purchase or discount of any consumer obligation having a term in excess of three years from the date the loan or other obligation is made or acquired by the company shall be secured solely by real property or solely by personal property. However, if the original principal amount of the consumer loan or obligation is twenty thousand dollars ($20,000) or more, then the loan or obligation shall be secured solely by real property or solely by personal property, or by both real property and personal

property. All loans and obligations made and purchased pursuant to this subdivision shall be repayable in installments and within a term not to exceed the limitations set forth in subdivision (a), except that consumer loans or obligations secured solely by personal property shall have a term not to exceed the term provided for in Section 18205 and except as otherwise may be provided for in Sections 18207, 18208, and 18209.

(c) Notwithstanding any other provision of this division, an industrial loan company may make loans and acquire or discount obligations having a term in excess of seven years secured primarily by real property pursuant to subdivision (a) or secured solely or primarily by real property pursuant to subdivision (b), provided that all of the loans and obligations in excess of seven years shall not in the aggregate exceed 70 percent of the industrial loan company's total assets. For purposes of this subdivision, any loan or obligation guaranteed or insured by any federal or state agency shall be considered as having a term of less than seven years.

(d) (1) In order to ensure the safety and soundness of industrial loan companies and to avoid an unreasonable concentration of loans and obligations that could result in balloon payments, all loans and obligations specified in subdivision (c) with a term in excess of 15 years and 30 days shall be repaid in substantially equal weekly, semimonthly, monthly, or quarterly installments during their term.

(2) In the event paragraph (1) is held invalid by any court of competent jurisdiction as preempted by, or in violation of, any federal law, then the aggregate of all loans and obligations having a term in excess of 15 years and 30 days secured solely or primarily by real property and having other than substantially equal weekly, semimonthly, monthly or quarterly installments during their term shall not exceed 1 percent of an industrial loan company's assets.

CHAPTER 639

An act to amend Sections 21333 and 21334 of the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 21333 of the Government Code is amended to read:

21333. Optional settlement 2 consists of the right to have a retirement allowance paid a member until his or her death and thereafter to his or her beneficiary for life.

If the beneficiary predeceases the member and the member elected this section to be effective on or after January 1, 1990, the

member's allowance shall be adjusted effective the first of the month following the death of the beneficiary, to reflect the benefit which would have been paid had the member not selected an optional settlement.

If a nonspouse beneficiary waives entitlement to this allowance and the member elected this section to be effective on or after January 1, 1993, the member's allowance shall be adjusted effective the first of the month following the receipt of the waiver of the allowance entitlement from the nonspouse beneficiary to reflect the benefit which would have been paid had the member not selected an optional settlement.

If the marriage of a member is dissolved or annulled or there is a legal separation between the member and the beneficiary spouse and the judgment dividing the community property awards the total interest in the retirement system to the member, and the member elects this section to be effective on or after January 1, 1994, the member's allowance shall be adjusted effective the first of the month following the filing of the judgment with the board to reflect the benefit that would have been paid had the member not selected an optional settlement.

If the beneficiary spouse predeceases the member on or after January 1, 1990, and the member elected this section to be effective prior to January 1, 1990, the member's allowance shall be adjusted effective the first of the month following the death of the beneficiary spouse to reflect a new allowance as calculated below.

If the nonspouse beneficiary waives entitlement to this allowance on or after January 1, 1993, and the member elected this section to be effective prior to January 1, 1993, the member's allowance shall be adjusted, effective the first of the month following receipt by the board of the waiver of entitlement from the nonspouse beneficiary, to reflect a new allowance as calculated below.

If the marriage of a member is dissolved or annulled or there is a legal separation between the member and the beneficiary spouse and the judgment dividing the community property awards the total interest in the retirement system to the member, and the member elected this section to be effective prior to January 1, 1994, the member's allowance shall be adjusted, effective the first of the month following the filing of the judgment with the board to reflect a new allowance as calculated below. The qualifying event shall be the date on which the judgment is filed with the board.

A percentage factor shall be applied to the difference between the member's unmodified allowance and optional settlement 2 allowance, both of which shall include applicable cost-of-living increases. The product of this equation shall then be added to the member's optional settlement 2 allowance and the total amount shall become the member's base allowance. The percentage factor applicable to each member shall be determined by the time between the member's retirement effective date and the date of death of the beneficiary spouse or by the time between the member's retirement

effective date and the date of the receipt of either the waiver of the allowance entitlement or the judgment of dissolution, annulment, or legal separation according to the following table:

Period between the member's retirement effective date and the date of the qualifying event	Percentage
Less than 12 months	95%
12 months through 23 months	85%
24 months through 35 months	75%
36 months through 47 months	65%
48 months through 59 months	55%
60 months through 71 months	45%
72 months through 83 months	35%
84 months through 95 months	25%
96 months through 107 months	15%
108 months through 119 months	5%
120 months or more	0%

Nothing in this section shall result in additional cost to the employer.

SEC. 2. Section 21334 of the Government Code is amended to read:

21334. Optional settlement 3 consists of the right to have a retirement allowance paid a member until his or her death, and thereafter to have one-half of his or her retirement allowance paid to his or her beneficiary for life.

If the beneficiary predeceases the member and the member elected this section to be effective on or after January 1, 1990, the member's allowance shall be adjusted effective the first of the month following the death of the beneficiary, to reflect the benefit which would have been paid had the member not selected an optional settlement.

If the marriage of a member is dissolved or annulled or there is a legal separation between the member and the beneficiary spouse and the judgment dividing the community property awards the total interest in the retirement system to the member, and the member elects this section to be effective on or after January 1, 1994, the member's allowance shall be adjusted effective the first of the month following the filing of the judgment with the board to reflect the benefit that would have been paid had the member not selected an optional settlement.

If a nonspouse beneficiary waives entitlement to this allowance and the member elected this section to be effective on or after January 1, 1993, the member's allowance shall be adjusted, effective the first of the month following the receipt of the waiver of the allowance entitlement from the nonspouse beneficiary, to reflect the benefit which would have been paid had the member not selected

an optional settlement.

If the beneficiary spouse predeceases the member on or after January 1, 1990, and the member elected this section to be effective prior to January 1, 1990, the member's allowance shall be adjusted effective the first of the month following the death of the beneficiary spouse to reflect a new allowance as calculated below.

If the marriage of a member is dissolved or annulled or there is a legal separation between the member and the beneficiary spouse and the judgment dividing the community property awards the total interest in the retirement system to the member, and the member elected this section to be effective prior to January 1, 1994, the member's allowance shall be adjusted, effective the first of the month following the filing of the judgment with the board to reflect a new allowance as calculated below. The qualifying event shall be the date on which the judgment is filed with the board.

If the nonspouse beneficiary waives entitlement to this allowance on or after January 1, 1993, and the member elected this section to be effective prior to January 1, 1993, the member's allowance shall be adjusted, effective the first of the month following receipt by the board of the waiver of entitlement from the nonspouse beneficiary, to reflect a new allowance as calculated below.

A percentage factor shall be applied to the difference between the member's unmodified allowance and optional settlement 3 allowance, both of which shall include applicable cost-of-living increases. The product of this equation shall then be added to the member's optional settlement 3 allowance and the total amount shall become the member's base allowance. The percentage factor applicable to each member shall be determined by the time between the member's retirement effective date and the date of death of the beneficiary spouse or by the time between the member's retirement effective date and the date of the receipt of either the waiver of the allowance entitlement or the judgment of dissolution, annulment, or legal separation according to the following table:

Period between the member's retirement effective date and the date of the qualifying event	Percentage
Less than 12 months	95%
12 months through 23 months	85%
24 months through 35 months	75%
36 months through 47 months	65%
48 months through 59 months	55%
60 months through 71 months	45%
72 months through 83 months	35%
84 months through 95 months	25%
96 months through 107 months	15%
108 months through 119 months	5%

120 months or more	0%

Nothing in this section shall result in additional cost to the employer.

CHAPTER 640

An act to add Section 5719.5 to the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Adults with serious mental illness and seriously emotionally disturbed children and youth are best treated in a system of care model rather than a pure medical model.

(b) Recent experiences with integrated service agencies for adults with serious mental illnesses, known as "AB 3777 projects," have demonstrated that effective systems of care involve a complex mix of acute, long-term, and rehabilitative services as well as nonmedical support services, such as housing, peer support, education, and employment services.

(c) Experiences with systems of care for seriously emotionally disturbed youth and their families, through projects known as "AB 377 projects," have demonstrated the necessity of coordination of mental health services with local governmental agencies such as social service agencies, probation departments, and educational services agencies.

SEC. 2. (a) It is the intent of the Legislature to ensure that cost-effective mental health services are provided to Medi-Cal recipients consistent with the integrated system of care models, with the State Department of Health Services' strategic plan for managed care, and within the guidelines developed by the State Department of Mental Health.

(b) It is the further intent of the Legislature to field test, within county mental health programs, major components of a system of integrated, capitated Medi-Cal mental health care that will provide the highest quality and most cost-effective mental health care. The purpose of the field test shall be to refine the development of components of a managed care system. Nothing in the field test shall delay the development and progress of the mental health managed care system for Medi-Cal recipients under the guidelines developed by the State Department of Mental Health.

SEC. 3. Section 5719.5 is added to the Welfare and Institutions Code, to read:

5719.5. (a) Notwithstanding any other provision of state law, and to the extent permitted by federal law, the State Department of Mental Health may, in consultation with the State Department of Health Services, field test major components of a capitated, integrated service system of Medi-Cal mental health managed care in not less than two, and not more than five participating counties.

(b) County participation in the field test shall be at the counties' option.

(c) Counties eligible to participate in the field test described in subdivision (a) shall include either of the following:

(1) Any county with an existing county organized health system.

(2) Any county that has been designated for the development of a new county organized health system.

(d) The State Department of Mental Health, in consultation with the State Department of Health Services, the counties selected for field testing, and groups representing mental health clients, their families and advocates, county mental health directors, and public and private mental health professionals and providers, shall develop, for the purpose of the field test, major components for an integrated, capitated service system of Medi-Cal mental health managed care, including, but not limited to, all of the following:

(1) (A) A definition of medical necessity.

(B) The preliminary definition developed pursuant to this paragraph shall be submitted to the Legislature no later than February 1, 1994.

(2) Protocols for facilitating access and coordination of mental health, physical health, educational, vocational, and other supportive services for persons receiving services through the field test.

(3) Procedures for promoting quality assurance, performance monitoring measures and outcome evaluation, including measures of client satisfaction, and procedures for addressing beneficiary grievances concerning service denials, changes, or terminations.

(e) Counties participating in the field test shall report to the State Department of Mental Health as the department deems necessary.

(f) Counties participating in the field test shall do both of the following:

(1) (A) Explore, in consultation with the State Department of Mental Health, the State Department of Health Services, and the California Mental Health Directors Association, rates for capitated, integrated Medi-Cal mental health managed care systems, using an actuarially sound ratesetting methodology.

(B) These rates shall be evaluated by the State Department of Mental Health and the State Department of Health Services to determine their fiscal impact, and shall result in no increase in cost to the General Fund, compared with the cost that would occur under the existing organization of Medi-Cal funded mental health services, except for caseload growth and price increases as included in the Medi-Cal estimates prepared by the State Department of Health Services and approved by the Department of Finance. In evaluating

the fiscal impact of these rates, the departments shall take into account any shift in clients between Medi-Cal programs in which the nonfederal match is funded by state funds and those in which the match is funded by local funds.

(2) Demonstrate the appropriate fiscal relationship between county organized health systems for the federal medicaid program and integrated, capitated Medi-Cal mental health managed care programs.

(g) The State Department of Mental Health, in consultation with the State Department of Health Services, the counties participating in the field test, and groups representing mental health clients, their families and advocates, county mental health directors, and public and private mental health professionals and providers, shall prepare and submit a progress report to the Legislature on the results of the field test. The report shall be submitted no later than July 1, 1995, and shall include the following elements:

(1) Evaluation of client satisfaction with capitated, integrated Medi-Cal mental health managed care.

(2) Evaluation of performance outcome measures and, to the extent data is available, information concerning outcomes in the areas of personal and community functioning for persons served in the field test.

(3) Evaluation of the validity of the definition of medical necessity in distinguishing levels of need for mental health services.

(4) Information necessary to determine whether the capitation methodology developed, and as utilized, protects the service needs and rights of beneficiaries of capitated, integrated Medi-Cal mental health managed care and minimizes the financial risks to systems providing that care.

CHAPTER 641

An act to add Chapter 8 (commencing with Section 11800) to Part 1 of Division 3 of Title 2 of, the Government Code, relating to state agencies and departments, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 8 (commencing with Section 11800) is added to Part 1 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 8. THE PERFORMANCE AND RESULTS ACT OF 1993

Article 1. General Provisions

11800. This chapter shall be known and may be cited as the Performance and Results Act of 1993.

11801. The Legislature finds and declares the following:

(a) The Legislature has an interest in improving the delivery of governmental services through the use of strategic planning and performance measurement.

(b) Strategic plans and budget contracts will provide managerial accountability and flexibility to state agencies and departments that participate in a performance budgeting pilot program.

Article 2. Pilot Project

11805. The Department of Finance shall develop a performance budgeting pilot project, involving at least four departments, including the Stephen P. Teale Consolidated Data Center, the Department of Parks and Recreation, the Department of General Services, and the Department of Consumer Affairs, or other departments substituted by the Department of Finance, to be implemented during the 1994–95 fiscal year. The pilot project shall be developed by the department in accordance with the following principles:

(a) Strategic planning is central.

(b) Outcome measures are the primary focus of management accountability.

(c) Productivity benchmarks measure progress toward strategic goals.

(d) Performance budgeting may work in conjunction with total quality management, which emphasizes an orientation toward customer service and quality improvement.

(e) Budget contracts between the Legislature and the executive branch require departments to deliver specified outcomes for a specified level of resources.

(f) Budget contracts shall include evaluation criteria, and shall specify "gainsharing" provisions, in which 50 percent of savings resulting from innovation are reinvested in the program.

(g) Managers are provided sufficient operational flexibility to achieve stated outcomes.

(h) Legislative involvement is critical and is appropriately focused on strategic planning and performance outcomes.

(i) Innovation is rewarded, not punished.

11806. Budget contracts entered into pursuant to Section 11805 shall be reviewed by the fiscal subcommittees of the Assembly and the Senate.

11807. The Department of Finance shall evaluate the pilot program and submit a report to the Chairperson of the Joint

Legislative Budget Committee on or before January 1, 1996. The evaluation shall determine the extent to which performance budgeting results in a more cost-effective and innovative provision of government services. The evaluation also shall report on the gainsharing rewards to each department in the program and the specific innovation which brought about the savings.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the Department of Finance to develop the structure and criteria for a performance budgeting pilot project for purposes of implementation in fiscal year 1994–95, it is necessary that this act take effect immediately.

CHAPTER 642

An act to add Section 130242 to the Public Utilities Code, relating to transportation.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Public agencies are striving to ensure that their procurements of goods and services maximize the value received for the public funds expended and are constantly examining their contracting practices for improvements.

(2) Numerous federal agencies, including the Army Corps of Engineers, the Environmental Protection Agency, the United States Postal Service, and public agencies in other countries have found that, under appropriate conditions, the use of single contracts that combine functions traditionally retained or let separately to procure public works and equipment produces significant cost and delivery schedule efficiencies over traditional methods of contracting.

(3) Contracts described in paragraph (2) generally involve a public agency imposing on a single contractor the obligation, among others, to ensure integration of various stages of a project, such as design and implementation of awarded work, so as to relieve the contracting agency of certain risks and liabilities it bears when it awards the work in multiple contracts to different contractors.

(4) The Los Angeles County Metropolitan Transportation Authority procures substantial goods and services in furtherance of its mandate to improve and expand transit services throughout its region.

(5) The authority has concluded that, under most conditions, its standard methods of procurement are the most efficient means of contracting, but, under certain conditions, the use of contracting that combines in a single contract functions traditionally retained or let separately can be expected to be more efficient.

(6) The authority has previously been authorized to procure rail transit systems that implement advanced rail transit technology, link the Los Angeles International Airport with the Palmdale Regional Airport, and link the eastern and western portions of the San Fernando Valley, through contracts similar to those described in paragraph (2).

(7) The authority has requested legislation to establish its authority as set forth herein, independent of other statutory authorization, to solicit contracts described in paragraph (2) under conditions where the work to be awarded has well defined performance specifications, would be awarded to the lowest responsible bidder, and would shift to the contractor under those contracts design and integration risks more traditionally borne by the authority.

(b) In order to accomplish these purposes, the Legislature hereby enacts Section 130242 of the Public Utilities Code.

SEC. 2. Section 130242 is added to the Public Utilities Code, to read:

130242. (a) In addition to the other powers it possesses, the authority may enter into contracts with private entities, the scope of which may combine within a single contract all or some of the planning, design, permitting, development, joint development, construction, construction management, acquisition, leasing, installation, and warranty of all or components of (1) transit systems, including, without limitation, passenger loading or intermodal station facilities, and (2) facilities on real property owned or to be owned by the authority.

(b) The authority may award contracts pursuant to subdivision (a) after a finding, by a two-thirds vote of the members of the authority, that awarding the contract under this section will achieve for the authority, among other things, certain private sector efficiencies in the integration of design, project work, and components.

(c) A contract awarded pursuant to this section may include operation and maintenance elements, if the inclusion of those elements (1) is necessary, in the reasonable judgment of the authority, to assess vendor representations and warranties, performance guarantees, or life cycle efficiencies, and (2) does not conflict with collective bargaining agreements to which the authority is a party.

(d) Any construction, alteration, demolition, repairs or other works of improvement performed under a contract awarded pursuant to this section shall be considered a public works project subject to Chapter 1 (commencing with Section 1720) of Part 7 of

Division 2 of the Labor Code, and shall be enforced by the Department of Industrial Relations in the same way it carries out this responsibility under the Labor Code.

(e) A contract under this section shall be let to the lowest responsible bidder whose bid is responsive to the criteria set forth in the invitation for bids. Notice requesting bids shall be published at least once in a newspaper of general circulation. The publication shall be made at least 60 days before the receipt of the bids. The authority, at its discretion, may reject any and all bids, and may readvertise. All bids submitted pursuant to this section shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder security: (1) cash, (2) a cashier's check made payable to the authority, (3) a certified check made payable to the authority, or (4) a bidder's bond executed by an admitted surety insurer, made payable to the authority. Upon an award to the lowest responsible bidder, the security of each unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the authority beyond 60 days from the time the award is made.

(f) Notwithstanding subdivision (a), this section does not apply to any rail transit system that links the Los Angeles International Airport with the Palmdale Airport, or that links the eastern and western portions of the San Fernando Valley, and related works of improvement including passenger loading or intermodal facilities.

CHAPTER 643

An act to amend Sections 3502 and 3516 of, and to add Section 3502.5 to, the Business and Professions Code, relating to physician assistants.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 3502 of the Business and Professions Code is amended to read:

3502. Notwithstanding any other provision of law, a physician assistant may perform those medical services as set forth by the regulations of the board when the services are rendered under the supervision of a licensed physician and surgeon or of physicians and surgeons approved by the board, except as provided in Section 3502.5.

Notwithstanding any other provision of law, a trainee may perform those medical services as set forth by the regulations of the board when those services are rendered within the scope of an approved program.

No medical services may be performed under this chapter in any of the following areas:

(a) The determination of the refractive states of the human eye, or the fitting or adaptation of lenses or frames for the aid thereof.

(b) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training or orthoptics.

(c) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye.

(d) The practice of dentistry or dental hygiene or the work of a dental auxiliary as defined in Chapter 4 (commencing with Section 1600).

This section shall not be construed in a manner that shall preclude the performance of routine visual screening as defined in Section 3501.

SEC. 1.5. Section 3502 of the Business and Professions Code is amended to read:

3502. Notwithstanding any other provision of law, a physician assistant may perform those medical services as set forth by the regulations of the board when the services are rendered under the supervision of a licensed physician and surgeon or of physicians and surgeons approved by the board, except as provided in Section 3502.5.

Notwithstanding any other provision of law, a trainee may perform those medical services as set forth by the regulations of the board when those services are rendered within the scope of an approved program.

No medical services may be performed under this chapter in any of the following areas:

(a) The determination of the refractive states of the human eye, or the fitting or adaptation of lenses or frames for the aid thereof.

(b) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training or orthoptics.

(c) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye.

(d) The practice of dentistry or dental hygiene or the work of an allied dental health professional as defined in Chapter 4 (commencing with Section 1600).

This section shall not be construed in a manner that shall preclude the performance of routine visual screening as defined in Section 3501.

SEC. 2. Section 3502.5 is added to the Business and Professions Code, to read:

3502.5. Notwithstanding any other provision of law, a physician assistant may perform those medical services permitted pursuant to Section 3502 during any state of war emergency, state of emergency, or state of local emergency, as defined in Section 8558 of the Government Code, and at the request of a responsible federal, state,

or local official or agency, or pursuant to the terms of a mutual aid operation plan established and approved pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code), regardless of whether the physician assistant's approved supervising physician is available to supervise the physician assistant, so long as a licensed physician is available to render the appropriate supervision. "Appropriate supervision" shall not require the personal or electronic availability of a supervising physician if that availability is not possible or practical due to the emergency. The local health officers and their designees may act as supervising physicians during emergencies without being subject to approval by the board. At all times, the local health officers or their designees supervising the physician assistants shall be licensed physicians and surgeons. Supervising physicians acting pursuant to this section shall not be subject to the limitation on the number of physician assistants supervised under Section 3516.

No responsible official or mutual aid operation plan shall invoke this section except in the case of an emergency that endangers the health of individuals. Under no circumstances shall this section be invoked as the result of a labor dispute or other dispute concerning collective bargaining.

SEC. 3. Section 3516 of the Business and Professions Code is amended to read:

3516. Notwithstanding any other provision of law, any physician assistant licensed by the committee shall be eligible for employment or supervision by any physician approved by the board to supervise physician assistants, except that:

(a) No physician shall supervise more than two physician assistants at any one time, except as provided in Sections 3502.5 and 3516.5.

(b) The board may restrict physicians to supervising specific types of physician assistants including, but not limited to, restricting physicians from supervising physician assistants outside of the physician's field of specialty.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 3502 of the Business and Professions Code proposed by both this bill and AB 221. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 3502 of the Business and Professions Code, and (3) this bill is enacted after AB 221, in which case Section 1 of this bill shall not become operative.

CHAPTER 644

An act to amend Section 130051.5 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 130051.5 of the Public Utilities Code is amended to read:

130051.5. (a) The appointing authorities specified in subdivisions (c) and (d) of Section 130051 may each appoint alternate members to the Los Angeles County Metropolitan Transportation Authority to represent, at a meeting of the authority, a regular member it has appointed, but only if the regular member cannot attend the meeting.

(b) For purposes of this section, an alternate member shall be:

(1) In the case of the member of the City Council of the City of Los Angeles appointed by the Mayor of the City of Los Angeles, any person appointed by the mayor with the consent of the city council. If the alternate member is a member of the city council, consent of the city council is not necessary. In the case of the two public members appointed by the mayor, any persons appointed by the mayor.

(2) In the case of a member appointed by the Los Angeles County City Selection Committee, the mayor or city council member of a city within the county, other than the City of Los Angeles or a city represented by a regular member.

(c) Any alternate member appointed to the Los Angeles County Metropolitan Transportation Authority, including any appointed pursuant to Section 130051, shall act for, and in the interests of, his or her appointing authority.

(d) Except for alternate members representing regular members appointed pursuant to subdivision (d) of Section 130051, alternate members appointed to the Los Angeles County Metropolitan Transportation Authority shall not vote on any matter reserved to the authority exclusively pursuant to Section 130051.12.

(e) (1) Every regular member and alternate member is subject to Section 87100 of the Government Code.

(2) No alternate member shall make, participate in making, or in any way attempt to use his or her appointed position to influence an authority decision in which the alternate member knows or has reason to know that the regular member, whom the alternate member represents, has a financial interest. This paragraph does not apply to alternate members representing regular members appointed pursuant to subdivision (d) of Section 130051.

SEC. 2. The Legislature finds and declares that the provisions of

this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 645

An act to amend Section 1714.10 of the Civil Code, and to amend Section 1021.5 of the Code of Civil Procedure, relating to actions and proceedings.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1714.10 of the Civil Code is amended to read:

1714.10. (a) No cause of action against an attorney for a civil conspiracy with his or her client arising from any attempt to contest or compromise a claim or dispute, and which is based upon the attorney's representation of the client, shall be included in a complaint or other pleading unless the court enters an order allowing the pleading that includes the claim for civil conspiracy to be filed after the court determines that the party seeking to file the pleading has established that there is a reasonable probability that the party will prevail in the action. The court may allow the filing of a pleading claiming liability based upon such a civil conspiracy following the filing of a verified petition therefor accompanied by the proposed pleading and supporting affidavits stating the facts upon which the liability is based. The court shall order service of the petition upon the party against whom the action is proposed to be filed and permit that party to submit opposing affidavits prior to making its determination. The filing of the petition, proposed pleading, and accompanying affidavits shall toll the running of any applicable statute of limitations until the final determination of the matter, which ruling, if favorable to the petitioning party, shall permit the proposed pleading to be filed.

(b) Failure to obtain a court order where required by subdivision (a) shall be a defense to any action for civil conspiracy filed in violation thereof. The defense shall be raised by the party charged with civil conspiracy upon that party's first appearance by demurrer, motion to strike, or such other motion or application as may be appropriate. Failure to timely raise the defense shall constitute a waiver thereof.

(c) This section shall not apply to a cause of action against an attorney for a civil conspiracy with his or her client, where (1) the attorney has an independent legal duty to the plaintiff, or (2) the attorney's acts go beyond the performance of a professional duty to

serve the client and involve a conspiracy to violate a legal duty in furtherance of the attorney's financial gain.

(d) This section establishes a special proceeding of a civil nature. Any order made under subdivision (a), (b), or (c) which determines the rights of a petitioner or an attorney against whom a pleading has been or is proposed to be filed, shall be appealable as a final judgment in a civil action.

(e) Subdivision (d) does not constitute a change in, but is declaratory of, the existing law.

SEC. 2. Section 1021.5 of the Code of Civil Procedure is amended to read:

1021.5. Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor, unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed therefor under Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code.

Attorneys' fees awarded to a public entity pursuant to this section shall not be increased or decreased by a multiplier based upon extrinsic circumstances, as discussed in Serrano v. Priest, 20 Cal. 3d 25, 49.

CHAPTER 646

An act to amend Section 1861.05 of the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1861.05 of the Insurance Code is amended to read:

1861.05. Approval of Insurance Rates. (a) No rate shall be approved or remain in effect which is excessive, inadequate, unfairly discriminatory or otherwise in violation of this chapter. In

considering whether a rate is excessive, inadequate or unfairly discriminatory, no consideration shall be given to the degree of competition and the commissioner shall consider whether the rate mathematically reflects the insurance company's investment income.

(b) Every insurer which desires to change any rate shall file a complete rate application with the commissioner. A complete rate application shall include all data referred to in Sections 1857.7, 1857.9, 1857.15, and 1864 and such other information as the commissioner may require. The applicant shall have the burden of proving that the requested rate change is justified and meets the requirements of this article.

(c) The commissioner shall notify the public of any application by an insurer for a rate change. The application shall be deemed approved sixty days after public notice unless (1) a consumer or his or her representative requests a hearing within forty-five days of public notice and the commissioner grants the hearing, or determines not to grant the hearing and issues written findings in support of that decision, or (2) the commissioner on his or her own motion determines to hold a hearing, or (3) the proposed rate adjustment exceeds 7% of the then applicable rate for personal lines or 15% for commercial lines, in which case the commissioner must hold a hearing upon a timely request. In any event, a rate change application shall be deemed approved 180 days after the rate application is received by the commissioner (A) unless that application has been disapproved by a final order of the commissioner subsequent to a hearing, or (B) extraordinary circumstances exist. For purposes of this section, "received" means the date delivered to the department.

(d) For purposes of this section, extraordinary circumstances include the following:

(1) Rate change application hearings commenced during the 180-day period provided by subdivision (c). If a hearing is commenced during the 180-day period, the rate change application shall be deemed approved upon expiration of the 180-day period or 60 days after the close of the record of the hearing, whichever is later, unless disapproved prior to that date.

(2) Rate change applications that are not approved or disapproved within the 180-day period provided by subdivision (c) as a result of a judicial proceeding directly involving the application and initiated by the applicant or an intervenor. During the pendency of the judicial proceedings, the 180-day period is tolled, except that in no event shall the commissioner have less than 30 days after conclusion of the judicial proceedings to approve or disapprove the application. Notwithstanding any other provision of law, nothing shall preclude the commissioner from disapproving an application without a hearing if a stay is in effect barring the commissioner from holding a hearing within the 180-day period.

(3) The hearing has been continued pursuant to Section 11524 of

the Government Code. The 180-day period provided by subdivision (c) shall be tolled during any period in which a hearing is continued pursuant to Section 11524 of the Government Code. A continuance pursuant to Section 11524 of the Government Code shall be decided on a case by case basis. If the hearing is commenced or continued during the 180-day period, the rate change application shall be deemed approved upon the expiration of the 180-day period or 100 days after the case is submitted, whichever is later, unless disapproved prior to that date.

SEC. 2. Section 3 of Chapter 1257 of the Statutes of 1992 is amended to read:

Sec. 3. This act shall apply to an application by an insurer for a rate change made on or after July 1, 1993. It shall also apply to any refilings, modifications, or supplements filed after July 1, 1993, with respect to any rate application filed before or after that date. For purposes of this section, any rate filings made after July 1, 1993, including those authorized by subdivision (b) of Section 2648.1 of Subchapter 4.8 of Chapter 5 of Title 10 of the California Code of Regulations, as filed with the Secretary of State on July 12, 1993, that are determined to be complete as of the time of filing, shall be deemed current.

SEC. 3. The Legislature finds and declares that this act furthers the purposes of Proposition 103 by promoting a competitive marketplace in the business of insurance.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for a competitive insurance marketplace, it is necessary for this act to take effect immediately.

CHAPTER 647

An act to amend Sections 22526 and 40001 of, and to add Section 12810.4 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 12810.4 is added to the Vehicle Code, to read:

12810.4. Notwithstanding any other provision of law, no violation point shall be given for a conviction of a violation of Section 22526.

SEC. 2. Section 22526 of the Vehicle Code is amended to read:

22526. (a) A driver of a vehicle shall not enter an intersection or marked crosswalk, notwithstanding any official traffic control signal

indication to proceed, unless there is sufficient space on the other side of the intersection or marked crosswalk to accommodate the vehicle driven without obstructing the through passage of vehicles from either side.

(b) A driver of a vehicle which is making a turn at an intersection who is facing a steady circular yellow or yellow arrow signal shall not enter the intersection or marked crosswalk unless there is sufficient space on the other side of the intersection or marked crosswalk to accommodate the vehicle driven without obstructing the through passage of vehicles from either side.

(c) A local authority may post appropriate signs at the entrance to intersections indicating the prohibition in subdivisions (a) and (b).

(d) A violation of this section is not a violation of a law relating to the safe operation of vehicles and is the following:

(1) A stopping violation when a notice to appear has been issued by a peace officer described in Section 830.1 or 830.2 of the Penal Code.

(2) A parking violation when a notice of parking violation is issued by a person, other than a peace officer described in paragraph (1), who is authorized to enforce parking statutes and regulations.

(e) This section shall be known and may be cited as the Anti-Gridlock Act of 1987.

SEC. 3. Section 40001 of the Vehicle Code is amended to read:

40001. (a) It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to cause the operation of the vehicle upon a highway in any manner contrary to law.

(b) It is unlawful for an owner to request, cause, or permit the operation of any vehicle:

(1) Which is not registered or for which any fee has not been paid under this code.

(2) Which is not equipped as required in this code.

(3) Which does not comply with the size, weight, or load provisions of this code.

(4) Which does not comply with the regulations promulgated pursuant to this code, or with applicable city or county ordinances adopted pursuant to this code.

(5) Which is not in compliance with Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code and the rules and regulations of the State Air Resources Board.

(c) Whenever a violation is chargeable to the owner or lessee of a vehicle pursuant to subdivision (a) or (b), the driver shall not be arrested or cited for the violation unless the vehicle is registered in a state or country other than California, or unless the violation is for an offense that is clearly within the responsibility of the driver. The Department of the California Highway Patrol shall report to the Legislature on or before January 1, 1988, concerning the effects of this subdivision.

(d) Whenever the owner, or lessee, or any other person is prosecuted for a violation pursuant to this section, the court may, on the request of the defendant, take appropriate steps to make the driver of the vehicle, or any other person who directs the loading, maintenance or operation of the vehicle, or any other person who gives false or erroneous information in a written certification of actual gross weight, a codefendant. However, the court may make the driver a codefendant only if the driver is the owner or lessee of the vehicle, or the driver is an employee or a contractor of the defendant who requested the court to make the driver a codefendant. If the codefendant is held solely responsible and found guilty, the court may dismiss the charge against the defendant.

(e) In any prosecution under this section, it is a rebuttable presumption that any person who gives false or erroneous information in a written certification of actual gross cargo weight has directed, requested, caused, or permitted the operation of a vehicle in a manner contrary to law in violation of subdivision (a) or (b), or both.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 648

An act to amend Section 650.2 of the Business and Professions Code, relating to dentists.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 650.2 of the Business and Professions Code is amended to read:

650.2. Notwithstanding Section 650 or any other provision of law, it shall not be unlawful for a person licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 or any other person, to participate in or operate a group advertising and referral service for dentists if all of the following conditions are met:

(a) The patient referrals by the service result from patient-initiated responses to service advertising.

(b) The service advertises, if at all, in conformity with Section 651 and subdivisions (i) and (*l*) of Section 1680.

(c) The service does not employ a solicitor within the meaning of subdivision (j) of Section 1680.

(d) The service does not impose a fee on the member dentists dependent upon the number of referrals or amount of professional fees paid by the patient to the dentist.

(e) Participating dentists charge no more than their usual and customary fees to any patient referred.

(f) The service registers with the Board of Dental Examiners of California, providing its name and address.

(g) The service files with the Board of Dental Examiners of California a copy of the standard form contract that regulates its relationship with member dentists, which contract shall be confidential and not open to public inspection.

(h) If more than 50 percent of its referrals are made to one individual, association, partnership, corporation, or group of three or more dentists, the service discloses that fact in all public communications, including, but not limited to, communication by means of television, radio, motion picture, newspaper, book, or list or directory of healing arts practitioners.

(i) When member dentists pay any fee to the service, any advertisement by the service shall clearly and conspicuously disclose that fact by including a statement as follows: "Paid for by participating dentists." In print advertisements, the required statement shall be in at least 9-point type. In radio advertisements, the required statement shall be articulated so as to be clearly audible and understandable by the radio audience. In television advertisements, the required statement shall be either clearly audible and understandable to the television audience, or displayed in a written form that remains clearly visible for at least five seconds to the television audience. This subdivision shall be operative on and after July 1, 1994.

The Board of Dental Examiners of California may adopt regulations necessary to enforce and administer this section.

The Board of Dental Examiners may suspend or revoke the registration of any service that fails to comply with the requirements of subdivision (i). No service may reregister with the board if it has a registration that is currently under suspension for a violation of subdivision (i), nor may a service reregister with the board if it had a registration revoked by the board for a violation of subdivision (i) less than one year after that revocation.

The Board of Dental Examiners of California may petition the superior court of any county for the issuance of an injunction restraining any conduct which constitutes a violation of this section.

It is unlawful and shall constitute a misdemeanor for a person to operate a group advertising and referral service for dentists without providing its name and address to the Board of Dental Examiners of California.

It is the intent of the Legislature in enacting this section not to otherwise affect the prohibitions provided in Section 650. The Legislature intends to allow the pooling of resources by dentists for the purposes of advertising.

This section shall not be construed in any manner which would authorize a referral service to engage in the practice of dentistry.

CHAPTER 649

An act to amend Section 51205 of the Health and Safety Code, relating to housing.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 51205 of the Health and Safety Code is amended to read:

51205. (a) The agency may institute any action or proceeding pursuant to applicable provisions of law against any housing sponsor receiving or assuming a loan under this part in any court of competent jurisdiction in order to enforce this part or the terms and provisions of any contract between the agency and the housing sponsor, to foreclose its mortgage, or to otherwise protect the public interest or the occupants of the housing development. Where necessary to protect the interests of the agency, it may, in connection with the action or proceeding, apply to the court for the appointment of a receiver to take over, manage, operate, and maintain the affairs of the housing sponsor of a rental or cooperative housing development. No receiver shall be appointed unless approved by the agency.

(b) (1) In the event of the reorganization of any housing sponsor, to the extent permitted by law, that reorganization shall be subject to the supervision and control of the agency. No reorganization of a housing sponsor shall be effected without the prior written consent of the agency.

(2) The agency may provide in its loan agreements that, in the event of a judgment against any housing sponsor in any action to which the agency is not a party, there shall be no sale of the housing development or any portion thereof, except upon 60 days' written notice to the agency. Upon receipt of notice, the agency or Attorney General shall take steps that, in its judgment, are necessary to protect the rights of all parties.

(c) Notwithstanding any other provisions of law, if, prior to foreclosing on any collateral provided by a housing sponsor, the agency institutes any judicial proceeding or takes any action against a housing sponsor to enforce compliance with the obligations set out

in subdivision (d) or to collect or offset any sum owed the agency as a result of any violation of any obligation set out in subdivision (d), that remedy or action shall not constitute an action within the meaning of subdivision (a) of Section 726 of the Code of Civil Procedure, or in any way constitute a violation of the intent or purposes of Section 726 of the Code of Civil Procedure, or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Section 580a, 580b, or 580d of, or subdivision (b) of Section 726 of, the Code of Civil Procedure. However, the above-referenced provisions of the Code of Civil Procedure shall apply to any judicial proceeding instituted, or nonjudicial foreclosure action taken, by the agency to collect the principal and interest due on the mortgage loan with the housing sponsor.

(d) Subdivision (c) shall apply to the obligations of the housing sponsor to do any or all of the following:

(1) Establish a schedule of rents, tenant standards and tenant selection process, and terms of occupancy, and to provide bilingual services and publications for tenants, pursuant to Section 51200.

(2) Permit the agency to inspect the premises, books, and records; supervise the day-to-day operation and maintenance of the housing financed by the agency, and to pay the fees to defray the cost thereof, pursuant to subdivisions (a) to (d), inclusive, of Section 51201.

(3) Comply with the provisions of federal, state, or local laws and ordinances, with the rules and regulations of the agency, or with the terms of any contract with the agency, pursuant to subdivisions (e) and (f) of Section 51201.

(4) Adhere to the limitation on earnings required by Section 51202 or by the agency's regulatory agreement, or both.

(5) Turn over managerial and financial control to the agency pursuant to Section 51203.

(6) Properly certify development costs pursuant to Section 51204.

(7) Remit earned surplus to the agency as required by Section 51206.

(e) This section shall apply to housing sponsors, as defined in Section 50074 and as used in Chapter 6.7 (commencing with Section 51325).

(f) Notwithstanding any other provision of law, the prevailing party in any action instituted pursuant to this section shall be awarded costs and reasonable attorney's fees, in an amount to be determined in the court's discretion.

(g) As used in this section, "mortgage loan" shall be defined as in Section 50086.

SEC. 2. The Legislature finds and declares that the amendments made by this act to subdivisions (c) and (d) of Section 51205 of the Health and Safety Code do not constitute a change in, but are declaratory of, existing law. These amendments are intended to clarify that the remedies provided to the California Housing Finance Agency by Section 51205 of the Health and Safety Code, as added by Chapter 610 of the Statutes of 1977, were intended to be available to

the agency without regard to Sections 580a, 580b, 580d, and 726 of the Code of Civil Procedure, so that the agency could expeditiously and efficiently enforce its mandates for the protection of its public and economic interests and of the occupants of its low-income and moderate-income housing. However, these amendments are not intended to deny housing sponsors the protection of these sections when the agency seeks to recover the principal and interest due on its promissory note with the housing sponsor, except where the agency and the housing sponsor have agreed that the agency may use escrows, reserves, or other funds for the purposes of paying the principal and interest due on the mortgage loan.

CHAPTER 650

An act to add Section 10424.2 to the Streets and Highways Code, relating to assessments.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 10424.2 is added to the Streets and Highways Code, to read:

10424.2. (a) If the Orange County Board of Supervisors determines, subsequent to the issuance of bonds, that the acquisition or construction of all or any part of the proposed improvement will be delayed beyond the date upon which, at the time the bonds were issued, the acquisition or construction was expected to occur, the balance then on deposit in the improvement fund, or the portion specified by the board, may, at the direction of the board, be applied to call outstanding bonds called for redemption. The call and redemption of bonds pursuant to this section shall not cause the amount of any assessment to be reduced. The board shall cause any annual assessment installments occurring after any redemption under this section to be reduced to the maximum extent permitted by law.

(b) The board may, from time to time, issue bonds in an aggregate principal amount not in excess of the principal amount of bonds called for redemption pursuant to subdivision (a). The net proceeds derived from the sale of the bonds shall be deposited in the improvement fund.

CHAPTER 651

An act to amend Sections 19617 and 19617.2 of the Business and Professions Code, and to amend Section 10 of Chapter 1019 of the Statutes of 1989, relating to horseracing.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 19617 of the Business and Professions Code is amended to read:

19617. The following definitions shall govern the construction of this chapter:

(a) "Breeder" means a person who is registered as a breeder of a California-bred thoroughbred with the official registering agency and is named on the applicable Certificate of Registration issued by the Jockey Club of New York.

(b) "Qualifying race" means the following:

(1) In the case of breeder awards, all races in this state, and all graded stakes races conducted within the United States.

(2) In the case of owner premiums, all nonclaiming races and certain claiming races, if the nonclaiming races and the certain claiming races are conducted in this state during racing meetings where more than one-half of the races on every racing program are for thoroughbreds.

(3) In the case of stallion awards, all nonclaiming races and certain claiming races, if the nonclaiming races and the certain claiming races are conducted in this state during racing meetings where more than one-half of the races on every racing program are for thoroughbreds, and all graded stakes races conducted within the United States.

(4) "Certain claiming races" means those claiming races in the central and southern zone in which the total purse exceeds the daily average purse in races, excluding stakes, distributed at that meeting during the prior year, or a claiming race in the northern zone in which the total purse exceeds 125 percent of the daily average purse in races, excluding stakes, distributed at that meeting during the prior year. In determining whether a race complies with this definition, the official registering agency shall base its determination on the actual amount of the purse at the time the race was conducted and shall not take into consideration any postrace adjustments to that purse.

(c) "Eligible earnings" means the following:

(1) In the case of breeder awards, the annual amount earned by a California-bred thoroughbred for finishing first, second, or third in qualifying races.

(2) In the case of owner premiums, the annual amount earned by

a California-bred thoroughbred for winning qualifying races.

(3) In order for earnings from a qualifying race to be considered as eligible earnings, a California-bred thoroughbred shall be registered as such with the official registering agency before the date entries were taken by the association for the qualifying race in which that horse earned purse money.

(4) In the case of stallion awards, the annual amount earned by California-conceived or California-bred foals of an eligible thoroughbred sire in winning qualifying races plus the amount earned by those foals for finishing second or third in a stakes race in this state and for finishing first, second, or third in a graded stakes race within the United States.

(5) For purposes of this paragraph, the maximum purse considered earned in any qualifying race within this state shall be three hundred thirty thousand dollars ($330,000) for a win, one hundred twenty thousand dollars ($120,000) for a second, and ninety thousand dollars ($90,000) for a third place finish and the maximum purse considered earned in any qualifying race outside of this state shall be one hundred sixty-five thousand dollars ($165,000) for a win, sixty thousand dollars ($60,000) for a second, and forty-five thousand dollars ($45,000) for a third place finish.

(6) In determining the purse earned in any qualifying race which is a stakes race, the amount earned shall be based solely on the added money, with no consideration to be given to other sources of the purse, such as nomination, entry, or starting fees, bonuses, and sponsor contributions, or any combination thereof.

(7) On or before February 1 of any year, it is the ultimate responsibility of the stallion owner to advise the official registering agency of any and all purses earned during the preceding year that shall be considered in determining the amount of the stallion award to which the owner is entitled.

(8) On or before February 1 of any year, it is the ultimate responsibility of the breeder to advise the official registering agency of any and all purses earned during the preceding year in graded stakes races outside of this state by horses bred by breeder.

(d) "Eligible thoroughbred sire" means a thoroughbred stallion that was continuously present in this state from February 1 to July 15, inclusive, of the calendar year in which the qualifying race was conducted, and if the sire left this state after July 15 of the calendar year in which the qualifying race was conducted, the sire returned to and was present in this state by February 1 of the following calendar year and thereafter remained until July 15 of that year. If a sire dies in this state and stood his last season at stud in this state, he shall thereafter continue to be considered an eligible thoroughbred sire. Notwithstanding any provision to the contrary, a thoroughbred stallion shall be considered an eligible thoroughbred sire only if its owner has filed a claim for stallion award on or before February 1 of the calendar year immediately following the calendar year for which the awards are being distributed.

(e) "Official registering agency" means the California Thoroughbred Breeders Association.

(f) "Owner" means the person who is registered with the paymaster of purses on the date the qualifying race was conducted as the owner of the California-bred thoroughbred earning purse money in that race.

(g) "Quotient," for any fund, means the amount allocated to that fund pursuant to subdivision (b) of Section 19617.2 divided by the aggregate eligible earnings of the horses applicable to that fund. In calculating the quotient for each of the funds, any retroactive purse payments with respect to a race shall not be considered after the disbursement of the fund.

(h) "Stallion owner" means the person who is the owner of the eligible thoroughbred sire as of December 31 of the calendar year in which that sire's foals had eligible earnings or the person who owned the eligible thoroughbred sire on the date that the sire died.

SEC. 2. Section 19617.2 of the Business and Professions Code is amended to read:

19617.2. (a) Any association conducting a race meeting that includes thoroughbred racing shall deposit with the official registering agency 0.34 percent of the total amount handled on-track, and 0.40 percent of the total amount handled off-track, in daily conventional and exotic parimutuel pools resulting from thoroughbred racing. These deposits shall be made at the following intervals:

(1) For any meeting of 20 racing days or less, the requisite deposit shall be made not later than seven days immediately following the last day of that meeting.

(2) For any meeting of more than 20 racing days, the initial deposit shall be made not later than 27 racing days after the commencement of that meeting and every 20 racing days thereafter, with a final deposit made not later than seven days following the last day of that meeting. The initial deposit for that meeting shall be based upon the applicable amount handled during the first 20 racing days of the meeting and deposits thereafter shall be based upon the applicable amount handled during the ensuing periods of 20 racing days with the last deposit being based upon the applicable amount handled from the end of the last 20-racing day period for which a deposit has been made to the end of the meeting.

(b) After deducting a sum equal to 5 percent of the total deposits made pursuant to subdivision (a) and the total deposits made pursuant to other provisions of this chapter, including Sections 19596.5, 19596.6, 19611.5, 19614.2, and 19616, the amount to compensate the official registering agency for its administrative cost and for expenses it incurs for educational, promotional, and research programs, the official registering agency shall for computational purposes distribute annually the balance of the deposits in the following manner:

(1) To the breeder fund, 55 percent from which breeder awards

are to be paid.

(2) To the owner fund, 15 percent from which owner premiums are to be paid.

(3) To the stallion fund, 20 percent from which stallion awards are to be paid.

(4) To the California-bred race fund, 10 percent to be used for the promotion of California-bred races and from which purses are to be provided or supplemented for California Cup Day and other California-bred races, which fund shall be administered by the official registering agency. Any funds not so used during any year shall augment the owner fund of that year and be distributable therefrom. It is the intent of the Legislature that all funds used for purses shall supplement and not supplant existing purses for California-breds.

(c) The official registering agency shall make the following payments to the breeder, owner, and stallion owner so as to encourage agriculture and the breeding of higher quality horses in this state:

(1) The breeder shall be paid a breeder award equal to the quotient for the breeder fund multiplied by the eligible earnings of the horse bred by the breeder.

(2) The owner shall be paid an owner premium equal to the quotient for the owner fund multiplied by the eligible earnings of the horse he or she owns.

(3) The stallion owner shall be paid a stallion award equal to the quotient for the stallion fund multiplied by the eligible earnings of the stallion owner's eligible thoroughbred sire.

(4) The breeder awards, owner premiums, and stallion awards shall be paid not later than March 31 of the calendar year immediately following the calendar year for which the awards or premiums were earned.

SEC. 3. Section 10 of Chapter 1019 of the Statutes of 1989 is amended to read:

Sec. 10. (a) The Legislature hereby finds and declares that the establishment of a day each year, on which a number of stakes races for California-bred thoroughbreds, conducted as the California Cup Day, is an event that should be undertaken to further promote the thoroughbred industry in this state. The Legislature understands that California Cup Day will be funded, in part, through the California-bred race fund, as well as from other traditional sources of purse money.

(b) It is the intent of the Legislature that the California Horse Racing Board, through the exercise of its licensing power, shall require an association in this state seeking a license to make a suitable weekend day available for California Cup Day and require the designated association to cooperate fully so as to maximize the exposure of California Cup Day.

(c) The Legislature further finds and declares that the thoroughbred industry in this state will be enhanced by the

California Horse Racing Board causing, to the extent practical, all satellite wagering facilities and operating associations in the state to simulcast and accept wagering on the races carded on California Cup Day.

CHAPTER 652

An act to amend Section 1260 of the Business and Professions Code, relating to clinical laboratory bioanalysts.

[Approved by Governor September 30, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1260 of the Business and Professions Code is amended to read:

1260. The department shall issue a clinical laboratory bioanalyst's license to each person who is a lawful holder of a degree of master of arts, master of science, or an equivalent or higher degree as determined by the department with a major in one of the biological sciences. Such education shall have been obtained in one or more established and reputable institutions maintaining standards equivalent, as determined by the department, to those institutions accredited by the Western Association of Schools and Colleges or an essentially equivalent accrediting agency, as determined by the department. The applicant also shall have a minimum of four years' experience as a licensed clinical laboratory technologist, performing clinical laboratory work embracing the various fields of clinical laboratory activity in a clinical laboratory approved by the department. The quality and variety of this experience shall be satisfactory to the department and shall have been obtained within the six-year period immediately antecedent to admission to the examination. The applicant shall successfully pass a written and oral examination conducted by the department or a committee designated by the department to conduct such examinations, indicating that the applicant is properly qualified. The department shall establish by regulation the required courses to be included in the college or university training.

CHAPTER 653

An act to add Section 6361.1 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 6361.1 is added to the Revenue and Taxation Code, to read:

6361.1. (a) Any qualified organization is a consumer of, and shall not be considered a retailer of, tangible personal property if all of the following conditions are met:

(1) The tangible personal property is of a handcrafted nature and is designed, created, or made by individuals with developmental disabilities who are members of, or receive services from, the qualified organization.

(2) The price of each item of tangible personal property sold does not exceed ten dollars ($10).

(3) The qualified organizations's sales are made on an irregular or intermittent basis.

(4) The qualified organizations's profits from the sales are used exclusively in furtherance of the purposes of the organization.

(b) For purposes of this section, "qualified organization" means any organization that meets all of the following conditions:

(1) The organization is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(2) The primary purpose of the organization is to provide services to individuals with developmental disabilities.

(3) The organization does not discriminate on the basis of race, sex, nationality, or religion.

SEC. 2. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 654

An act to amend Sections 14087.52, 14087.53, 14087.54, and 14087.57 of, and to add Section 14132.06 to, the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 14087.52 of the Welfare and Institutions Code is amended to read:

14087.52. (a) It is necessary that a special commission be established in San Bernardino County in order to meet the problems of the delivery of publicly assisted medical care in the county and to demonstrate ways of promoting quality care and cost efficiency. Because there is no general law under which such a commission could be formed, the adoption of a special act and the formation of a special commission is required.

(b) The Board of Supervisors of San Bernardino County may, by ordinance, establish a commission to negotiate the exclusive contract specified in Section 14087.5 and to arrange for the provision of health care services provided pursuant to this chapter. If the board of supervisors elects to enact this ordinance, all rights, powers, duties, privileges, and immunities vested in a county by this article shall be vested in the county commission. Any reference in this article to "county" shall mean the commission established pursuant to this section.

(c) It is the intent of the Legislature that if such a commission is formed, the County of San Bernardino shall, with respect to its medical facilities and programs, occupy no greater or lesser status than any other health care provider in negotiating with the commission for contracts to provide health care services.

(d) The enabling ordinance shall specify the membership of the county commission, the qualifications for individual members, the manner of appointment, selection, or removal of commissioners, and how long they shall serve, and any other matters as the board of supervisors deems necessary or convenient for the conduct of the county commission's activities. The commission so established shall be considered an entity separate from the county, shall file the statement required by Section 53051 of the Government Code, and shall have, in addition to the rights, powers, duties, privileges, and immunities previously conferred, the power to acquire, possess, and dispose of real or personal property, as may be necessary for the performance of its functions, to employ personnel and contract for services required to meet its obligations, and to sue or be sued. Any obligations of the commission, statutory, contractual, or otherwise, shall be the obligations solely of the commission and shall not be the

obligations of the county or of the state unless expressly provided for in a contract between the commission and the county or state.

(e) Upon creation, the commission may borrow from the county, and the county may lend the commission funds, or issue revenue anticipation notes to obtain those funds necessary to commence operations.

(f) In the event the commission may no longer function for the purposes for which established, at such time as the commission's then existing obligations have been satisfied or the commission's assets have been exhausted, the board of supervisors may by ordinance terminate the commission.

(g) Prior to the termination of the commission, the board of supervisors shall notify the State Department of Health Services of its intent to terminate the commission. The department shall conduct an audit of the commission's records within 30 days of notification to determine the liabilities and assets of the commission. The department shall report its findings to the board within 10 days of completion of the audit. The board shall prepare a plan to liquidate or otherwise dispose of the assets of the commission and to pay the liabilities of the commission to the extent of the commission's assets, and present the plan to the department within 30 days upon receipt of these findings.

(h) Upon termination of the commission by the board, the County of San Bernardino shall manage any remaining assets of the commission until superseded by a department approved plan. Any liabilities of the commission shall not become obligations of the county upon either the termination of the commission or the liquidation or disposition of the commission's remaining assets.

(i) Any assets of the commission shall be disposed of pursuant to provisions contained in the contract entered into between the state and the commission pursuant to this article.

SEC. 2. Section 14087.53 of the Welfare and Institutions Code is amended to read:

14087.53. (a) It is necessary that a special commission be established in Ventura County in order to meet the problems of the delivery of publicly assisted medical care in the county and to demonstrate ways of promoting quality care and cost efficiency. Because there is no general law under which such a commission could be formed, the adoption of a special act and the formation of a special commission is required.

(b) The Board of Supervisors of Ventura County may, by ordinance, establish a commission to negotiate the exclusive contract specified in Section 14087.5 and to arrange for the provision of health care services provided pursuant to this chapter. If the board of supervisors elects to enact this ordinance, all rights, powers, duties, privileges, and immunities vested in a county by this article shall be vested in the county commission. Any reference in this article to "county" shall mean the commission established pursuant to this section.

(c) The enabling ordinance shall specify the membership of the county commission, the qualifications for individual members, the manner of appointment, selection, or removal of commissioners, and how long they shall serve, and any other matters as the board of supervisors deems necessary or convenient for the conduct of the county commission's activities. The commission so established shall be considered an entity separate from the county, shall file the statement required by Section 53051 of the Government Code, and shall have, in addition to the rights, powers, duties, privileges, and immunities previously conferred, the power to acquire, possess, and dispose of real or personal property, as may be necessary for the performance of its functions, to employ personnel and contract for services required to meet its obligations, and to sue or be sued. Any obligations of the commission, statutory, contractual, or otherwise, shall be the obligations solely of the commission and shall not be the obligations of the county or of the state.

(d) Upon creation, the commission may borrow from the county and the county may lend the commission funds, or issue revenue anticipation notes to obtain those funds necessary to commence operations.

(e) In the event the commission may no longer function for the purposes for which established, at such time as the commission's then existing obligations have been satisfied or the commission's assets have been exhausted, the board of supervisors may by ordinance terminate the commission.

(f) Prior to the termination of the commission, the board of supervisors shall notify the State Department of Health Services of its intent to terminate the commission. The department shall conduct an audit of the commission's records within 30 days of notification to determine the liabilities and assets of the commission. The department shall report its findings to the board within 10 days of completion of the audit. The board shall prepare a plan to liquidate or otherwise dispose of the assets of the commission and to pay the liabilities of the commission to the extent of the commission's assets, and present the plan to the department within 30 days upon receipt of these findings.

(g) Any assets of the commission shall be disposed of pursuant to provisions contained in the contract entered into between the state and the commission pursuant to this article.

(h) It is the intent of the Legislature that if such a commission is formed, the County of Ventura shall, with respect to its medical facilities and programs, occupy no greater or lesser status than any other health care provider in negotiating with the commission for contracts to provide health care services.

(i) Upon termination of the commission by the board, the County of Ventura shall manage any assets of the commission until superseded by a department approved plan. Any liabilities of the commission shall not become obligations of the county upon either the termination of the commission or the liquidation or disposition

of the commission's remaining assets.

SEC. 3. Section 14087.54 of the Welfare and Institutions Code is amended to read:

14087.54. (a) Any county or counties may establish a special commission in order to meet the problems of the delivery of publicly assisted medical care in the county or counties and to demonstrate ways of promoting quality care and cost efficiency.

(b) A county board of supervisors may, by ordinance, establish a commission to negotiate the exclusive contract specified in Section 14087.5 and to arrange for the provision of health care services provided pursuant to this chapter. The boards of supervisors of more than one county may also establish a single commission with the authority to negotiate an exclusive contract and to arrange for the provision of services in those counties. If a board of supervisors elects to enact this ordinance, all rights, powers, duties, privileges, and immunities vested in a county by this article shall be vested in the county commission. Any reference in this article to "county" shall mean a commission established pursuant to this section.

(c) It is the intent of the Legislature that if a county forms a commission pursuant to this section, the county shall, with respect to its medical facilities and programs occupy no greater or lesser status than any other health care provider in negotiating with the commission for contracts to provide health care services.

(d) The enabling ordinance shall specify the membership of the county commission, the qualifications for individual members, the manner of appointment, selection, or removal of commissioners, and how long they shall serve, and any other matters as a board of supervisors deems necessary or convenient for the conduct of the county commission's activities. A commission so established shall be considered an entity separate from the county or counties, shall file the statement required by Section 53051 of the Government Code, and shall have in addition to the rights, powers, duties, privileges, and immunities previously conferred, the power to acquire, possess, and dispose of real or personal property, as may be necessary for the performance of its functions, to employ personnel and contract for services required to meet its obligations, and to sue or be sued. Any obligations of a commission, statutory, contractual, or otherwise, shall be the obligations solely of the commission and shall not be the obligations of the county or of the state.

(e) Upon creation, a commission may borrow from the county or counties, and the county or counties may lend the commission funds, or issue revenue anticipation notes to obtain those funds necessary to commence operations.

(f) In the event a commission may no longer function for the purposes for which it was established, at such time as the commission's then existing obligations have been satisfied or the commission's assets have been exhausted, the board or boards of supervisors may by ordinance terminate the commission.

(g) Prior to the termination of a commission, the board or boards

of supervisors shall notify the State Department of Health Services of its intent to terminate the commission. The department shall conduct an audit of the commission's records within 30 days of the notification to determine the liabilities and assets of the commission. The department shall report its findings to the board or boards within 10 days of completion of the audit. The board or boards shall prepare a plan to liquidate or otherwise dispose of the assets of the commission and to pay the liabilities of the commission to the extent of the commission's assets, and present the plan to the department within 30 days upon receipt of these findings.

(h) Upon termination of a commission by the board or boards, the county or counties shall manage any remaining assets of the commission until superseded by a department approved plan. Any liabilities of the commission shall not become obligations of the county or counties upon either the termination of the commission or the liquidation or disposition of the commission's remaining assets.

(i) Any assets of a commission shall be disposed of pursuant to provisions contained in the contract entered into between the state and the commission pursuant to this article.

SEC. 4. Section 14087.57 of the Welfare and Institutions Code is amended to read:

14087.57. Notwithstanding any provision of law, a member of a commission authorized by Section 14087.51 or 14087.54 shall not be deemed to be interested in a contract entered into by the commission within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all of the following apply:

(a) The member was appointed to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(b) The contract authorizes the member or the organization the member represents to provide services to Medi-Cal beneficiaries under the commission's program.

(c) The contract contains substantially the same terms and conditions as contracts entered into with other individuals or organizations that the member was appointed to represent.

(d) The member does not influence or attempt to influence the commission or another member of the commission to enter into the contract in which the member is interested.

(e) The member discloses the interest to the commission and abstains from voting on the contract.

(f) The commission notes the member's disclosure and abstention in its official records and authorizes the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

SEC. 5. Section 14132.06 is added to the Welfare and Institutions Code, to read:

14132.06. (a) Services specified in this section that are provided by a local educational agency are covered Medi-Cal benefits, to the

extent federal financial participation is available, and subject to utilization controls and standards adopted by the department, and consistent with Medi-Cal requirements for physician prescription, order, and supervision.

(b) Any provider enrolled on or after January 1, 1993, to provide services pursuant to this section may bill for those services provided on or after January 1, 1993.

(c) Nothing in this section shall be interpreted to expand the current category of professional health care practitioners permitted to directly bill the Medi-Cal program.

(d) Nothing in this section is intended to increase the scope of practice of any health professional providing services under this section or Medi-Cal requirements for physician prescription, order, and supervision.

(e) (1) For purposes of this section, the local educational agency shall, as a condition of enrollment to provide services under this section, be considered the provider of services. A local educational agency provider shall, as a condition of enrollment to provide services under this section, enter into, and maintain, a contract with the department in accordance with guidelines contained in regulations adopted by the director and published in Title 22 of the California Code of Regulations.

(2) Notwithstanding paragraph (1), a local educational agency providing services pursuant to this section shall utilize current safety net and traditional health care providers, when those providers are accessible to specific schoolsites identified by the local educational agency to participate in this program, rather than adding duplicate capacity.

(f) For purposes of this section, covered services may include all of the following local educational agency services:

(1) Health and mental health evaluations and health and mental health education.

(2) Medical transportation.

(3) Nursing services.

(4) Occupational therapy.

(5) Physical therapy.

(6) Physician services.

(7) Psychology and counseling services.

(8) School health aide services.

(9) Speech pathology services and audiology services.

(g) Local educational agencies may, but need not, provide any or all of the services specified in subdivision (f).

(h) For purposes of this section, "local educational agency" means the same as defined by subdivision (e) of Section 33509 of the Education Code.

SEC. 6. The Legislature, in adding Section 14132.06 to the Welfare and Institutions Code by this act, intends that:

(a) Access to care will be enhanced through the use of existing health care providers.

(b) Children will receive continuity of care from providers to the extent practicable.

(c) Additional funds made available to local educational agencies may be reinvested in services to children and families pursuant to subdivision (g) of Section 8804 of the Education Code.

(d) Decisions of reinvestment of those funds will involve a local school-linked services collaborative group, such as that specified in Chapter 759 of the Statutes of 1991, including representatives of traditional and safety net providers.

(e) Local educational agencies in counties with existing efforts to provide coordinated services with children consult with those counties in planning for the expenditures of those funds.

(f) Local educational agencies report on a regular basis on their use of these funds.

(g) The provider agreement between the local educational agency and the State Department of Health Services required to implement Section 14132.06 of the Welfare and Institutions Code specify the responsibility of the local educational agency to realize the legislative goals stated in this section.

SEC. 7. The department shall adopt emergency regulations to implement this act in accordance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The initial adoption of emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

CHAPTER 655

An act to add Article 2.5 (commencing with Section 48020) to Chapter 2 of Part 7 of Division 30 of the Public Resources Code, relating to solid waste and making an appropriation therefor.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Article 2.5 (commencing with Section 48020) is added to Chapter 2 of Part 7 of Division 30 of the Public Resources Code, to read:

Article 2.5. Solid Waste Disposal and Codisposal Site Cleanup Program

48020. (a) For purposes of this article, the following terms have

the following meaning:

(1) "Codisposal site" means a hazardous substance release site listed pursuant to Section 25356 of the Health and Safety Code where the disposal of hazardous substances, hazardous waste, and solid waste have occurred.

(2) "Trust fund" means the Solid Waste Cleanup Trust Fund created pursuant to Section 48027.

(b) The board shall, on January 1, 1994, initiate a program for the cleanup of solid waste disposal sites and for the cleanup of solid waste at codisposal sites where the responsible party either cannot be identified or is unable or unwilling to pay for timely remediation, and where cleanup is needed to protect public health and safety or the environment.

(c) The board shall expend not more than three hundred thousand dollars ($300,000) annually for administration of the program. All remaining funds appropriated for the purposes of the program shall be expended on direct cleanup or emergency actions at solid waste disposal sites and for solid waste at codisposal sites.

48021. (a) In prioritizing the sites for cleanup pursuant to Section 48020, the board shall consider the degree of risk to public health and safety and the environment posed by conditions at a site, the ability of the site owner to clean up the site without monetary assistance, the ability of the board to adequately clean up the site with available funds, maximizing the use of available funds, and other factors as determined by the board.

(b) In administering the program authorized by Section 48020, the board may expend funds directly for cleanup, provide loans to responsible parties who demonstrate the ability to repay state funds, and provide matching grants to local governments to assist in site cleanup.

(c) The board may expend a portion of the funds appropriated for the program for the abatement of illegal disposal sites. For the purposes of this subdivision, the board may provide grants to certified local enforcement agencies. Where funds are provided by the board to address illegal disposal sites within a jurisdiction, the local enforcement agency shall provide ongoing enforcement to prevent recurring use of illegal disposal sites.

(d) In developing and implementing the program, the board shall consult with certified local enforcement agencies and the regional water boards.

48022. On or before March 31, 1995, and annually thereafter, in conjunction with the annual report required by Section 40507, the board shall report to the Governor and the Legislature on the program for solid waste disposal and codisposal site cleanup. The report shall include, but need not be limited to, a description of sites cleaned up under the program, a description of remaining sites where there is no responsible party or the responsible party is unable or unwilling to pay for cleanup, and recommendations for any needed legislative changes.

48023. (a) If the board expends any funds pursuant to this article, the board shall, to the extent possible, seek repayment from responsible parties in an amount equal to the amount expended, a reasonable amount for the board's cost of contract administration, and an amount equal to the interest that would have been earned on the expended funds.

(b) In implementing this article, the board is vested, in addition to its other powers, with all the powers of an enforcement agency under this division.

(c) The amount of any cost incurred by the board pursuant to this article shall be recoverable from responsible parties in a civil action brought by the board or, upon the request of the board, by the Attorney General pursuant to Section 40432.

48024. Any contract entered into by the board pursuant to Section 48021 or 48022 is exempt from approval by the Department of General Services pursuant to Section 10295 of the Public Contract Code.

48025. The board may adopt regulations for the implementation of this article.

48026. All expenses which are incurred by the board in carrying out this article shall be payable solely from the trust fund. No liability or obligation is imposed upon the state pursuant to this part, and the board shall not incur a liability or obligation beyond the extent to which money is provided in the trust fund for the purposes of this article.

48027. (a) The Solid Waste Disposal Site Cleanup Trust Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the money in the trust fund is hereby continuously appropriated to the board for expenditure, without regard to fiscal years, for the purposes of this article.

(b) The following money shall be deposited into the trust fund:

(1) Funds appropriated by the Legislature from the Integrated Waste Management Account to the board for solid waste disposal or codisposal site cleanup.

(2) Any interest earned on the money in the trust fund.

(3) Any cost recoveries from responsible parties for solid waste disposal or codisposal site cleanup and loan repayments pursuant to this article.

(c) If this article is repealed, the trust fund shall be dissolved and all money in the fund shall be distributed to solid waste landfill operators who have paid into the trust fund during effective life of the trust fund.

(d) Any trust fund distributions received by solid waste landfill operators pursuant to subdivision (c) may be used for only any of the following activities, as related to solid waste landfills:

(1) Solid waste landfill closure and postclosure maintenance operations.

(2) Implementation of Part 258 (commencing with Section 258.1) of Title 40 of the Code of Federal Regulations.

(3) Corrective actions at the solid waste landfill.

(e) The balance in the trust fund each July 1 shall not exceed thirty million dollars ($30,000,000).

48028. (a) It is the intent of the Legislature that the sum of eight million dollars ($8,000,000) be appropriated for the 1993–94 fiscal year to the board for the purposes of this article.

(b) Commencing with the 1994–95 fiscal year, and each fiscal year thereafter, the board shall expend not more than five million dollars ($5,000,000) from the trust fund in that fiscal year and any funds that are not expended shall remain in the trust fund for future expenditure by the board for the purposes of this article or until this article is repealed. Any administrative costs associated with the program shall be funded in the annual Budget Act.

SEC. 2. Of the amount appropriated by subdivision (a) of Item 3910-001-387 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993), as amended by Section 58.2 of Assembly Bill 1220 of the 1993–94 Regular Session of the Legislature, for 10-Planning and Enforcement, the California Integrated Waste Management Board shall expend three hundred thousand dollars ($300,000) for administrative costs incurred in implementing the program required pursuant to Article 2.5 (commencing with Section 48020) of Chapter 2 of Part 5 of Division 30 of the Public Resources Code.

SEC. 3. This act shall become operative only if Assembly Bill 1220 of the 1993–94 Regular Session of the Legislature is enacted and takes effect on or before January 1, 1994.

CHAPTER 656

An act to amend Sections 40052, 40055, 40404, 40406, 41802, 43020, 43021, 43030, 43040, 43209, 43214, 43217, 43219, 43300, 43506, 43509, 43510, 43601, 44009, 44105, 44106, 45301, 45400, 45401, 45402, 45403, 45404, 45406, 47901, 48000, and 48004 of, to add Sections 40135.1, 40195.1, 43216.5, 43220, 43221, and 43610.1 to, to add and repeal Sections 43104 and 47200.5 of, to add Chapter 1.5 (commencing with Section 43100) to Part 4 of, Article 1.5 (commencing with Section 43230) to Chapter 2 of Part 4 of, and Article 3.5 (commencing with Section 47200) to Chapter 1 of Part 7 of, Division 30 of, to repeal Section 45407 of, to repeal Article 7 (commencing with Section 45700) of Chapter 1 of Part 5 of, and Part 6 (commencing with Section 46000) of, Division 30 of, the Public Resources Code, to amend Sections 45001, 45002, 45009, 45051, 45101, 45451, 45859, 45863, 45866, and 45901 of, to amend the heading of Part 23 (commencing with Section 45001) of, and the heading of Chapter 2 (commencing with Section 45051) of Part 23 of, Division 2 of, to amend and renumber Section 45151.1 of, to add Section 45651.5 to, and to repeal Sections 45052, 45151, and 45902 of, the Revenue and Taxation Code, and to amend Sections 13260 and 13320 of the Water Code, to amend

Items 0860-001-387, 3910-001-387, 3940-001-001, and 3940-001-193, of, to amend and renumber Item 3940-001-435 of, and to repeal Items 0860-001-435 and 3910-101-435 of, Section 2.00 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993), relating to solid waste, making an appropriation therefore, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 40052 of the Public Resources Code is amended to read:

40052. The purpose of this division is to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient and cost-effective manner to conserve water, energy and other natural resources, to protect the environment, to improve regulation of existing solid waste landfills, to ensure that new solid waste landfills are environmentally sound, to improve permitting procedures for solid waste management facilities, and to specify the responsibilities of local governments to develop and implement integrated waste management programs.

SEC. 2. Section 40055 of the Public Resources Code is amended to read:

40055. (a) This division, or any rules or regulations adopted pursuant thereto, is not a limitation on the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer, including, but not limited to, the exercise by the state water board or the regional water boards of any of their powers and duties pursuant to Division 7 (commencing with Section 13000) of the Water Code, the exercise by the Department of Toxic Substances Control of any of its powers and duties pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, and the exercise by the State Air Resources Board or any air pollution control district or air quality management district of any of its powers and duties pursuant to Part 3 (commencing with Section 40000) of Division 26 of the Health and Safety Code.

(b) The exercise of authority under this division, including, but not limited to, the adoption of regulations, plans, permits, or standards or any enforcement actions shall not duplicate or be in conflict with any determination relating to water quality control made by the state water board or regional water boards, including requirements in regulations adopted by or under the authority of the state water board.

(c) Any plans, permits, standards, or corrective action taken under this division shall incorporate, as a condition of the action, any applicable waste discharge requirements issued by the state water

board or a regional water board, and shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170, and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7, of the Water Code and the state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code existing at the time of the action or proposed action.

SEC. 3. Section 40135.1 is added to the Public Resources Code, to read:

40135.1. "Account" means the Integrated Waste Management Account created in the fund pursuant to Section 48001.

SEC. 4. Section 40195.1 is added to the Public Resources Code, to read:

40195.1. (a) "Solid waste landfill" means a disposal facility that accepts solid waste for land disposal, but does not include a facility which receives only wastes generated by the facility owner or operator in the extraction, beneficiation, or processing of ores and minerals, or a cemetery which disposes onsite only the grass clippings, floral wastes, or soil resulting from activities on the grounds of that cemetery.

(b) For the purposes of Article 3 (commencing with Section 43500) and Article 4 (commencing with Section 43600) of Chapter 2 of Part 4, "solid waste landfill" does not include a facility which receives only nonhazardous wood waste derived from timber production or wood product manufacturing. For the purposes of the fee imposed by Section 48000, facilities which receive only nonhazardous wood waste derived from timber production or wood product manufacturing shall, notwithstanding Section 48000, pay a quarterly fee to the state board on all solid waste disposed at each disposal site, which does not exceed the amount of the fee due and payable to the state board by those facilities during the 1992 calendar year.

SEC. 5. Section 40404 of the Public Resources Code is amended to read:

40404. (a) The members of the board shall represent the state at large and not any particular area of the state and shall serve full time.

(b) Except as provided in Section 40406 for specified members of the board the appointments to the board which are made by the Governor shall be subject to confirmation by the Senate in accordance with Article 2 (commencing with Section 1770) of Chapter 4 of Division 4 of Title 1 of the Government Code.

SEC. 6. Section 40406 of the Public Resources Code is amended to read:

40406. (a) Except as provided for the initial board in subdivision (b), each member of the board shall be appointed for a term of four years. A vacancy shall be filled by the appointing power for the unexpired portion of the term in which it occurs.

(b) The terms of the initial members of the board are as follows:

(1) The term of the initial member appointed pursuant to

subdivision (a) of Section 40401 ends on January 1, 1992.

(2) The term of the initial member appointed pursuant to subdivision (b) of Section 40401 ends on January 1, 1993.

(3) The term of one of the initial members appointed pursuant to subdivision (c) of Section 40401 ends on January 1, 1996.

(4) The term of one of the initial members appointed pursuant to subdivision (c) of Section 40401 ends on January 1, 1997.

(5) The term of the initial member appointed pursuant to subdivision (d) of Section 40401 ends on January 1, 1995.

(6) The term of the initial members appointed pursuant to subdivision (e) of Section 40401 ends on January 1, 1994.

(c) Notwithstanding subdivision (b) of Section 40404, the initial members appointed by the Governor pursuant to subdivision (c) of Section 40401 are not subject to confirmation by the Senate.

(d) The Governor shall appoint the initial members appointed pursuant to subdivisions (a) and (b) of Section 40401 and transmit the appointment on or before July 1, 1990. The Senate shall confirm or refuse to confirm the appointments made pursuant to subdivision (a) or (b), or both, on or before a date which is 90 days after receipt of the notice of appointment.

(e) If the Senate refuses or fails to confirm the appointments pursuant to subdivision (d), the Governor, on or before a date which is within 20 days after that refusal or failure, shall appoint another person and transmit the appointment and the Senate shall confirm or refuse to confirm that appointment on or before a date which is 90 days after receipt of the notice of appointment.

(f) If the Senate takes no action to confirm or refuse to confirm an appointment pursuant to subdivision (d) or (e) on or before January 1, 1991, that appointment is deemed confirmed.

SEC. 7. Section 41802 of the Public Resources Code is amended to read:

41802. (a) Within 120 days of receiving a city or county household hazardous waste element, the board shall approve or disapprove the element.

(b) The board shall not disapprove a household hazardous waste element if the local agency preparing the element demonstrates to the board that, in implementing the household hazardous waste element, the local agency will comply with all of the following requirements:

(1) The local agency will use feasible methods to properly reduce, collect, recycle, treat, and dispose of household hazardous waste generated within its jurisdiction.

(2) The local agency will devote reasonable expenditures to the safe reduction, collection, recycling, treatment, and disposal of household hazardous waste, relative to the other expenditures required by this division, and relative to the expenditures for household hazardous waste programs which were awarded grants of funds pursuant to Section 46401 as it read on January 1, 1993.

(3) The local agency will make all reasonable efforts to inform the

public of, and to encourage public participation in, the household hazardous waste program.

(4) Regardless of the number of household hazardous waste collection events held each year by a local agency, or the actual number of households served, the collection program is available for use by all households within the jurisdiction of the local agency, and provides a safe alternative for all residents within the jurisdiction of the local agency to properly and safely dispose of household hazardous waste.

(c) (1) In determining whether a local agency meets the conditions for approval of a household hazardous waste element set forth in subdivision (b), the board shall consider the geographic size and population of the city or county and the quantity of household hazardous waste generated within the jurisdiction of the city or county.

(2) The board may provide an exemption from the requirements of subdivision (b) if a city or a county demonstrates, and the board concurs, that compliance with those requirements is not feasible due to the small geographic size of the city or county and the small quantity of waste generated within the city or county. The board may establish alternative, but less comprehensive, requirements for those cities or counties to ensure compliance with this division.

SEC. 8. Section 43020 of the Public Resources Code is amended to read:

43020. The board shall adopt and revise regulations which set forth minimum standards for solid waste handling, transfer, composting, transformation, and disposal, in accordance with this division, and Section 4520 of, and Chapter 6.5 (commencing with Section 25100) of Division 20 of, the Health and Safety Code. The board shall not include any requirements that are already under the authority of the State Air Resources Board for the prevention of air pollution or of the state water board for the prevention of water pollution.

SEC. 9. Section 43021 of the Public Resources Code is amended to read:

43021. Regulations shall include standards for the design, operation, maintenance, and ultimate reuse of solid waste facilities, but shall not include aspects of solid waste handling or disposal which are solely of local concern or which are within the jurisdiction of the State Air Resources Board, air pollution control districts and air quality management districts, or the state water board or regional water boards.

SEC. 10. Section 43030 of the Public Resources Code is amended to read:

43030. (a) The board shall adopt regulations that are consistent with Section 40055 governing the monitoring and control of the subsurface migration of landfill gas.

(b) The board shall consult with the state water board, the State Air Resources Board, and the California Air Pollution Control

Officers Association to ensure that the regulations do not conflict with any regulations adopted by the state water board and the State Air Resources Board or air pollution control districts and air quality management districts.

(c) The regulations adopted by the board pursuant to subdivision (a) shall establish monitoring and control standards, based on the potential of the waste to generate landfill gas, as determined by the board, and shall require owners and operators of disposal sites or disposal facilities to report monitoring data and to perform, or cause to be performed, site inventories and evaluations of disposal sites or disposal facilities for the subsurface migration of landfill gas.

(d) As part of the biennial report required to be submitted pursuant to Section 40507, the board shall report to the Legislature on the progress in implementing the monitoring and control program for the subsurface migration of landfill gas established pursuant to this section, and make recommendations, as needed, to improve the program.

(e) If an owner or operator of a disposal site or disposal facility is in compliance with requirements of the air pollution control district or the air quality management district within whose jurisdiction the disposal site or disposal facility is located, the owner or operator shall be deemed to be in compliance with this section and with any regulations adopted by the board pursuant to this section. However, owners or operators of disposal sites and disposal facilities shall be required to comply with regulations adopted by the board pursuant to this section, which impose requirements not addressed by the requirements of the air pollution control district or the air quality management district within whose jurisdiction the disposal site or disposal facility is located.

SEC. 11. Section 43040 of the Public Resources Code is amended to read:

43040. (a) The board shall adopt standards and regulations requiring that, as a condition for the issuance, modification, revision, or review of a solid waste facilities permit for a disposal facility, the operator of the disposal facility shall provide assurance of adequate financial ability to respond to personal injury claims and public or private property damage claims resulting from the operations of the disposal facility which occur before closure.

(b) To the extent practicable and consistent with federal law and regulations, the board and the state water board shall, on or before January 1, 1994, develop a work plan for combining financial assurance requirements for operating liability with financial assurance requirements for corrective actions into one mechanism which provides appropriate coverage for both purposes.

SEC. 12. Chapter 1.5 (commencing with Section 43100) is added to Part 4 of Division 30 of the Public Resources Code, to read:

CHAPTER 1.5. THE SOLID WASTE DISPOSAL REGULATORY REFORM ACT OF 1993

43100. This chapter shall be known, and may be cited, as the Solid Waste Disposal Regulatory Reform Act of 1993.

43101. The Legislature hereby finds and declares as follows:

(a) The board and the state water board have submitted a report entitled Joint Report: Reforming the California Solid Waste Disposal Regulatory Process, and have recommended legislation to the Governor and the Legislature that identifies areas of regulatory overlap, conflict, and duplication and makes recommendations for change.

(b) The report found that regulatory overlap, conflict, and duplication were evident between the board and the state water board and between the board and local enforcement agencies and that regulatory reform was necessary to streamline the state's solid waste disposal regulatory process. In addition, it was found that a recasting of the solid waste facilities permit was warranted to make more efficient and streamlined the permitting and regulation of solid waste disposal facilities. The report also makes numerous other appropriate recommendations for improving the manner in which the management of solid waste is regulated by the state which require immediate legislative response.

(c) It is, therefore, the intent of the Legislature, in enacting this chapter, and in making the necessary revisions to this division and Division 7 (commencing with Section 13000) of the Water Code by the act enacting this chapter, to accomplish all of the following:

(1) As provided by Sections 40054 and 40055, the board, the state water board, and the regional water boards shall retain their appropriate statutory authority over solid waste disposal facilities and sites. A clear and concise division of authority shall be maintained in both statute and regulation to remove all areas of overlap, duplication, and conflict between the board and the state water board and regional water boards, or between the board and any other state agency, as appropriate.

(2) The state water board and regional water boards shall be the sole agencies regulating the disposal and classification of solid waste for the purpose of protecting the waters of the state, consistent with Section 40055, and the board and the certified local enforcement agencies shall regulate all other aspects of solid waste disposal within the scope of their appropriate regulatory authority.

(3) To effectuate that clear division of authority, the board and the state water board shall develop one consolidated set of solid waste disposal facility regulations where distinct chapters are written and implemented by the appropriate agency, and one consolidated permit application, including one technical report to incorporate the requirements of both the solid waste facilities permit and waste discharge requirements.

(4) The process and timeframe for the review and approval of the

consolidated application shall be revised to allow, to the greatest extent feasible, for the concurrent development and review of the waste discharge requirements and the solid waste facilities permit. The intent of this permit streamlining effort is to shorten the overall timeframe for processing a permit and to accommodate concurrent reviews by the local enforcement agency and the regional water boards within a set timeframe.

(5) Any details of a concurrent permit approval process shall be worked out in an implementation plan that is developed jointly by the board and state water board with input from interested parties.

(6) If practicable, joint inspections of facilities shall be conducted by the board, regional water boards, and local enforcement agencies, and inspection reports shall be shared with any other affected state or local agency.

(7) The closure and postclosure maintenance requirements of the board and the state water board for solid waste landfills shall be combined into one set of consolidated regulations which require one closure and postclosure maintenance plan to be prepared for each solid waste landfill.

(8) A clear and concise division of responsibilities shall be maintained to minimize overlap and duplication of permitting, inspection, and compliance duties between the board and certified local enforcement agencies. The board's primary role in regard to permitting and compliance shall be to provide technical assistance and ongoing training and support to local enforcement agencies, to ensure a local enforcement agency's performance in complying with state minimum standards, and to review permits and other documents submitted by local enforcement agencies for board concurrence or approval. The board shall strengthen the state certification and evaluation program for local enforcement agencies and shall set clear and uniform standards to be met by local enforcement agencies.

(9) The Solid Waste Disposal Site Cleanup and Maintenance Account shall be abolished and a solid waste disposal fee established for deposit in the Integrated Waste Management Account which provides adequate funding for all obligations imposed pursuant to this division. In addition, the costs of the state water board and the regional water boards of regulating solid waste facilities shall be funded from the account.

(10) The Solid Waste Assessment Test Program shall continue operating with resources from the Integrated Waste Management Account until all of the ranked solid waste disposal sites are reviewed.

(11) Responsibility for establishing and enforcing financial responsibility requirements for solid waste landfills, from operation through to cleanup, shall, to the greatest extent practicable and consistent with applicable federal law, be consolidated into one set of regulations administered by the board, in consultation with the state water board.

(12) At a minimum, the financial assurance requirements for

closure and postclosure maintenance shall be combined, and the requirements for corrective action and operating liability shall be reviewed, as required by subdivision (b) of Section 43040, to determine if there can be further consolidation of financial assurance requirements for solid waste landfills.

(13) The state water board or the appropriate regional water board shall have access to the financial assurance funds for closure and postclosure activities and to financial assurance funds for corrective action, as necessary, to address water quality problems, if the owner or operator has failed to implement the required closure and postclosure activities or corrective action activities.

(d) It is the intent of the Legislature, in enacting this chapter, and in making the necessary revisions to this division and Division 7 (commencing with Section 13000) of the Water Code, to ensure that the state minimum standards for environmental protection at solid waste disposal facilities are not reduced.

43102. On or before July 1, 1994, the board and the state water board shall jointly develop a plan to implement the changes made to this division and Division 7 (commencing with Section 13000) of the Water Code by the act adding this chapter, and shall make recommendations for additional reforms to both statutory law and regulations, which are consistent with the intent specified in Section 43101. In developing an implementation plan, the board and the state water board shall seek the active participation of representatives of local government, other state agencies, the regulated community, environmental organizations, and interested parties. At a minimum, the implementation plan shall include a work plan for revising regulations, a timeline for implementation, and a description of necessary administrative actions.

43103. The board and the state water board shall adopt regulations for the implementation of the changes required by this chapter, and the act adding this chapter.

43104. (a) It is the intent of the Legislature that any funds which are appropriated by the Legislature to the board for the purposes of this chapter, that are not expended for those purposes, be expended by the board to implement source reduction, recycling, public education, and market development programs required by this division.

(b) This section shall become inoperative on July 1, 1994, and as of January 1, 1995, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1995, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 13. Section 43209 of the Public Resources Code is amended to read:

43209. The local enforcement agency, within its jurisdiction and consistent with its certification by the board, shall do all of the following:

(a) Enforce applicable provisions of this part, regulations adopted under this part, and terms and conditions of permits issued pursuant

to Chapter 3 (commencing with Section 44001).

(b) Request enforcement by appropriate federal, state, and local agencies of their respective laws governing solid waste storage, handling, and disposal.

(c) File with the board, upon its request, information the board determines to be necessary.

(d) Develop, implement, and maintain inspection, enforcement, permitting, and training programs.

(e) Adopt an enforcement program consisting of regulations necessary to implement this chapter and the standards adopted pursuant thereto, and to establish specific local standards for solid waste handling and disposal subject to approval by a majority vote of its local governing body. However, any such regulation shall be consistent with this title and all regulations adopted by the board. The enforcement program shall also include a description of the locally adopted procedures for the permit and inspection program pursuant to Chapter 3 (commencing with Section 44001).

(f) Keep and maintain records of its inspection, enforcement, permitting, training, and regulatory programs, and of any other official action in accordance with regulations adopted by the board.

(g) Consult, as appropriate, with the appropriate local health agency concerning all actions which involve health standards. The consultation shall include affording the health agency adequate notice and opportunity to conduct and report the evaluation as it reasonably determines is appropriate.

SEC. 14. Section 43214 of the Public Resources Code is amended to read:

43214. (a) The board shall, on or before October 1, 1993, develop performance standards for evaluating certified local enforcement agencies and shall periodically review each certified local enforcement agency and its implementation of the permit, inspection, and enforcement program. The board's review shall include periodic inspections of solid waste facilities within the jurisdiction of each local enforcement agency for the purpose of evaluating whether the local enforcement agency is appropriately applying and enforcing state minimum standards at solid waste sites within its jurisdiction.

(b) Following initial certification of a local enforcement agency by the board, the board shall conduct a performance review of the local enforcement agency every 18 months, or more frequently as determined by the board.

(c) In conducting performance reviews of local enforcement agencies, the board shall, based on the performance standards developed pursuant to subdivision (a), determine whether each local enforcement agency is in compliance with the requirements of this article and the regulations adopted to implement this article. If the board finds that a local enforcement agency is not fulfilling its responsibilities pursuant to this article and if the board also finds that this lack of compliance has contributed to significant noncompliance

with state minimum standards at solid waste facilities within the jurisdiction of the local enforcement agency, the board shall withdraw its approval of designation pursuant to Sections 43215 and 43216. Notwithstanding Sections 43215 and 43216, if the board finds that conditions at solid waste facilities within the jurisdiction of the local enforcement agency threaten public health and safety or the environment, the board shall, within 10 days of notifying the local enforcement agency, become the enforcement agency until another local enforcement agency is designated locally and certified by the board.

(d) The board shall find that a local enforcement agency is not fulfilling its responsibilities pursuant to this article, and may take action as prescribed by subdivision (c), if the board, in conducting its performance review, makes one or more of the following findings with regard to compliance with this part and Part 5 (commencing with Section 45000):

(1) The local enforcement agency has failed to inspect solid waste facilities and disposal sites.

(2) The local enforcement agency has intentionally misrepresented the results of inspections.

(3) The local enforcement agency has failed to prepare, or cause to be prepared, permits, permit revisions, or closure and postclosure maintenance plans.

(4) The local enforcement agency has approved permits, permit revisions, or closure and postclosure maintenance plans which are not consistent with this part and Part 5 (commencing with Section 45000).

(5) The local enforcement agency has failed to take appropriate enforcement actions.

SEC. 15. Section 43216.5 is added to the Public Resources Code, to read:

43216.5. In addition to the procedures for board withdrawal of its approval of a local enforcement agency's designation pursuant to Sections 43214, 43215, and 43216, the board may take any actions which are determined by the board to be necessary to ensure that local enforcement agencies fulfill their obligations under this chapter. To ensure that a local enforcement agency is appropriately fulfilling its obligations under this chapter and implementing regulations, the board may conduct more frequent inspections and evaluations within a local enforcement agency's jurisdiction, establish a schedule and probationary period for improved performance by a local enforcement agency, assume partial responsibility for specified local enforcement agency duties, and implement any other measures which may be determined by the board to be necessary to improve local enforcement agency compliance.

SEC. 16. Section 43217 of the Public Resources Code is amended to read:

43217. The board shall provide ongoing training, technical

assistance, and guidance to local enforcement agencies to assist in their decisionmaking processes. This assistance shall include, but is not limited to, providing all of the following:

(a) Technical studies and reports.

(b) Copies of innovative solid waste facility operation plans.

(c) Investigative findings and analyses of new solid waste management practices and procedures.

(d) A program for loaning technical and scientific equipment, to the extent that funds are available to the board to purchase that equipment.

SEC. 17. Section 43219 of the Public Resources Code is amended to read:

43219. (a) The board may, at its discretion, conduct inspections and investigations of solid waste facilities in order to evaluate the local enforcement agency and to ensure that state minimum standards are met.

(b) Except as otherwise provided by Section 43220, the board, in conjunction with an inspection conducted by the local enforcement agency, shall conduct inspections of solid waste facilities within the jurisdiction of each local enforcement agency. The board shall inspect the types and number of solid waste facilities which are determined by the board to be necessary to adequately evaluate whether the local enforcement agency is ensuring compliance by solid waste facilities with state minimum standards. A written inspection report shall be prepared and submitted within 30 days of the inspection to the local enforcement agency.

(c) If the board identifies any significant violation of state minimum standards that were not identified and resolved through previous inspections by the local enforcement agency, the board shall take appropriate action as authorized by Sections 43215 and 43216.5.

(d) Notwithstanding any other provision of this section and Sections 43215 and 43216, if, as a result of a facility inspection conducted pursuant to subdivision (b), the board finds that conditions at a solid waste facility within the jurisdiction of a local enforcement agency threaten public health and safety or the environment, the board shall, within 10 days of notifying the local enforcement agency, become the enforcement agency until another local enforcement agency is designated locally and certified by the board.

SEC. 18. Section 43220 is added to the Public Resources Code, to read:

43220. The board, in conjunction with an inspection conducted by the local enforcement agency, shall conduct at least one inspection every 18 months of each solid waste landfill and transformation facility in the state. A written inspection report shall be prepared and submitted within 30 days of the inspection to the local enforcement agency. If the board identifies any significant violation of state minimum standards that was not resolved through

previous inspections by the local enforcement agency, the board shall take appropriate action as authorized by Sections 43215 and 43216.5 and subdivision (d) of Section 43219.

SEC. 19. Section 43221 is added to the Public Resources Code, to read:

43221. In conjunction with the annual report required by Section 40507, the board shall report to the Legislature annually on the status of the certification and evaluation of local enforcement agencies pursuant to this chapter.

SEC. 20. Article 1.5 (commencing with Section 43230) is added to Chapter 2 of Part 4 of Division 30 of the Public Resources Code, to read:

Article 1.5. Local Enforcement Agency Grants

43230. The board shall expend funds from the account, upon appropriation by the Legislature, for the making of grants to local enforcement agencies to carry out the solid waste facilities permit and inspection program pursuant to Chapter 3 (commencing with Section 44001). The total amount of grants made by the board pursuant to this section shall not exceed, in any one fiscal year, one million five hundred thousand dollars ($1,500,000).

43231. The board shall adopt regulations for the implementation of this article.

43232. All expenses which are incurred by the board in carrying out this article are payable solely from the account. No liability or obligation is imposed upon the state pursuant to this part, and the board shall not incur a liability or obligation beyond the extent to which money is provided in the account for the purposes of this article.

SEC. 21. Section 43300 of the Public Resources Code is amended to read:

43300. The board, when acting in its capacity as an enforcement agency, may enforce all provisions of this division, and the regulations adopted thereto, for the protection of the environment and the public health and safety, and from nuisance.

SEC. 22. Section 43506 of the Public Resources Code is amended to read:

43506. (a) After receiving a complete closure plan and postclosure maintenance plan, the regional water board shall approve or disapprove the plans pursuant to the authority and time schedules specified in Division 7 (commencing with Section 13000) of the Water Code. The board shall incorporate the action of the regional water board and shall only approve plans that include an acceptable mechanism for providing the necessary funds to implement the plans.

(b) In reviewing closure plans and postclosure maintenance plans pursuant to this section, the regional water boards shall review and take action on those portions of the plans which are related to the

protection of the waters of the state and the board shall review and take action on the remaining portions of the plans.

SEC. 23. Section 43509 of the Public Resources Code is amended to read:

43509. (a) The board, in consultation with the state water board and in compliance with Section 40055, shall adopt and amend regulations specifying closure plan and postclosure maintenance plan adoption procedures and uniform standards to implement Section 43601. Regulations adopted pursuant to this section shall not include standards and requirements contained in regulations adopted by the State Water Resources Control Board pursuant to Division 7 (commencing with Section 13000) of the Water Code. The regulations shall also require solid waste landfill owners or operators to calculate, and periodically revise, cost estimates for closure and for postclosure maintenance, for as long as the solid waste could have an adverse effect on the quality of the waters of the state, but not less than 30 years after closure unless all wastes are removed in accordance with federal and state law.

(b) The board may adopt regulations that authorize the adoption of both preliminary and final closure and postclosure maintenance plans. Regulations for preliminary closure and postclosure maintenance plans may require less specificity and engineering detail than final closure and postclosure maintenance plans, and these regulations shall apply only in those cases in which there is reasonable certainty that the solid waste landfill will not close for at least one year following approval of the plans. Preliminary closure and postclosure maintenance plans shall provide sufficient detail to enable the owner or operator and the board to accurately estimate the costs for closure and postclosure maintenance.

(c) If a solid waste landfill owner or operator has submitted a closure plan and postclosure maintenance plan which satisfies the requirements of this chapter, and which has been approved by the local enforcement agency, the board, and the appropriate regional water board, the plans shall be deemed to have satisfactorily complied with all state requirements for the adoption of a closure plan and postclosure maintenance plan.

SEC. 24. Section 43510 of the Public Resources Code is amended to read:

43510. (a) The regulations adopted by the board pursuant to this article and Article 4 (commencing with Section 43600) shall not duplicate or conflict with the regulations imposing closure and postclosure maintenance requirements adopted by the state water board which are found in Chapter 15 (commencing with Section 2510) of Chapter 3 of Title 23 of the California Code of Regulations.

(b) On or before June 30, 1995, the board and the state water board shall revise the regulations adopted pursuant to this article and Article 4 (commencing with Section 43600) of this chapter and Section 13172 of the Water Code for the purpose of consolidating the requirements of the board and the state water board for closure and

postclosure maintenance into one set of regulations.

SEC. 24.5. Section 43601 of the Public Resources Code is amended to read:

43601. (a) The evidence of financial ability shall be sufficient to meet the closure and postclosure maintenance costs when needed.

(b) Owners and operators of disposal sites shall provide evidence of financial ability through the use of any of the mechanisms set forth in Part 258 (commencing with Section 258.1) of Title 40 of the Code of Federal Regulations or through the use of any other mechanisms approved by the board. However, the board may adopt regulations which reasonably condition the use of one or more of those mechanisms to ensure adequate protection of public health and safety and the environment, but shall not exclude the use of any mechanism permitted under federal law. In addition, the assurances of financial responsibility submitted pursuant to Section 43600 shall provide that funds shall be available to the regional water boards upon the issuance of any order under Chapter 5 (commencing with Section 13300) of Division 7 of the Water Code to implement closure and postclosure activities.

(c) The state water board or the appropriate regional water board shall have access to the financial assurance funds for closure and postclosure activities, and to financial assurance funds for corrective action, as necessary, to address water quality problems, if the owner or operator has failed to implement the required closure and postclosure activities or corrective action activities.

SEC. 25. Section 43610.1 is added to the Public Resources Code, to read:

43610.1. A disposal site owner or operator who meets the requirements of this article and its implementing regulations shall be deemed to have satisfactorily complied with all state requirements for financial ability to provide for closure and postclosure maintenance costs.

SEC. 25.5. Section 44009 of the Public Resources Code is amended to read:

44009. (a) The board shall, in writing, concur or object to the issuance, modification, or revision of any solid waste facilities permit within 60 days of the board's receipt of any proposed solid waste facilities permit submitted under Section 44007 after consideration of the issues in this section. If the board determines that the permit is not consistent with the state minimum standards adopted pursuant to Section 43020, or is not consistent with Sections 43040, 44007, 44010, 44017, 44150, and 44152 or Division 31 (commencing with Section 50000), it shall object to provisions of the permit, and shall submit those objections to the local enforcement agency for its consideration. Until a countywide integrated waste management plan has been approved by the board pursuant to this division, if the board determines, based on substantial evidence in the record, that issuance of the permit would prevent or substantially impair achievement of the diversion requirements prescribed in Section

41780, the board shall object to the permit and shall submit its determination and specific objections to the local enforcement agency, the applicant, and the city or county within which the facility is located for their consideration. If the board fails to concur or object in writing within 60 days, it shall be deemed to have concurred in the issuance of the permit as submitted to it.

(b) Notwithstanding subdivision (a), the board is not required to concur in, or object to, and shall not be deemed to have concurred in, the issuance of a solid waste facilities permit for a disposal facility if the owner or operator is not in compliance with, as determined by the regional water board, an enforcement order issued pursuant to Chapter 5 (commencing with Section 13300) of Division 7 of the Water Code, or if all of the following conditions exist:

(1) Waste discharge requirements for the disposal facility issued by the applicable regional water board are pending review in a petition before the state water board.

(2) The petition for review of the waste discharge requirements includes a request for a stay of the waste discharge requirements.

(3) The state water board has not taken action on the stay request portion of the pending petition for review of waste discharge requirements.

(c) In objecting to the issuance, modification, or revision of any solid waste facilities permit pursuant to this section, the board shall, based upon substantial evidence in the record on the matter before the board, state its reasons for objecting. The board shall not object to the issuance, modification, or revision of any solid waste facilities permit unless it finds that the permit is not consistent with state minimum standards adopted pursuant to Section 43020, or is not consistent with Section 43040, 44007, 44010, 44017, 44150, or 44152, or Division 31 (commencing with Section 50000).

SEC. 26. Section 44105 of the Public Resources Code is amended to read:

44105. (a) The board shall maintain an inventory of all permitted solid waste facilities and shall conduct inspections as required by Sections 43214 and 43219 and as authorized by Part 5 (commencing with Section 45000).

(b) The board shall assist local enforcement agencies in inspections of illegal, abandoned, inactive, or closed disposal sites to ensure that public health and safety and the environment are adequately protected.

(c) The board shall refer all violations of Division 7 (commencing with Section 13000) to the appropriate regional water board and shall refer all other violations to the local enforcement agency.

SEC. 27. Section 44106 of the Public Resources Code is amended to read:

44106. (a) The enforcement agency shall develop a compliance schedule for a solid waste facility included in the inventory prepared pursuant to Section 44104. The compliance schedule shall ensure that diligent progress will be made to bring the solid waste facility into

compliance.

(b) Except as provided in subdivision (d), if the solid waste facility is not in compliance with the schedule established by the local enforcement agency, the local enforcement agency may revoke the operating permit of the solid waste facility until the violations of state minimum standards are remedied. If a closed or abandoned disposal site is not in compliance within the one-year period, the unremedied condition is prima facie evidence of negligence; and, in any action for damages against the owner of the property for injury caused by the unremedied condition, the burden of proving that the injury was not caused by the unremedied condition shall be on the owner of the property.

(c) The enforcement agency may recover any costs incurred pursuant to this section by charging the fee authorized by Section 43213.

(d) The enforcement agency shall refer violations of a waste discharge requirement adopted under Section 13263 of the Water Code to the appropriate regional water board.

SEC. 28. Section 45301 of the Public Resources Code is amended to read:

45301. At least 10 days before issuing an enforcement order which is not for an emergency, within five days after issuing an enforcement order for an emergency, or within 15 days after discovering a violation of a state law, regulation, or term or condition of a solid waste facilities permit, for a disposal site or disposal facility which is likely to result in an enforcement action, the following agencies shall provide a written statement providing an explanation of, and justification for, the enforcement order or a description of the violation in the following manner:

(a) The local enforcement agency shall provide the statement to the regional water board, the board, the air pollution control district or air quality management district, and the Department of Toxic Substances Control.

(b) A regional water board shall provide the statement to the local enforcement agency, the board, the air pollution control district or air quality management district, and the Department of Toxic Substances Control.

(c) An air pollution control district or an air quality management district shall provide the statement to the local enforcement agency, the board, the regional water board, and the Department of Toxic Substances Control.

(d) The Department of Toxic Substances Control shall provide the statement to the local enforcement agency, the board, the regional water board, and the air pollution control district or air quality management district.

SEC. 29. Section 45400 of the Public Resources Code is amended to read:

45400. (a) Upon the request of a local enforcement agency or regional water board or upon its own initiative, if the local

enforcement agency has failed to take enforcement action as required by this division and has been notified by the board of that failure pursuant to Section 43215, and no other local enforcement agency is designated, the board shall, pursuant to Section 43216, be the enforcement agency and enforce this division within the local jurisdiction pursuant to Section 43300. In taking any such enforcement action, the board is vested, in addition to its other powers, with all the powers of a local enforcement agency under this division.

(b) Notwithstanding any other provision of this section and Sections 43215 and 43216, if the board finds that the failure to take enforcement action pursuant to subdivision (a) constitutes a threat to public health and safety or the environment, the board shall become the enforcement agency, within 10 days of notifying the local enforcement agency, and shall enforce this division until another enforcement agency is designated locally and certified by the board.

SEC. 30. Section 45401 of the Public Resources Code is amended to read:

45401. (a) When acting as the enforcement agency pursuant to Section 45400, the board may require the owner or operator of a solid waste landfill to do either or both of the following:

(1) Take corrective action as necessary to abate a nuisance or protect human health and safety and the environment.

(2) Prepare and implement a closure plan and postclosure maintenance plan.

(b) The board, as the enforcement agency, may expend funds available to it from the account in preparing and issuing an order under this article, to the extent that funds are appropriated by the Legislature for that purpose.

SEC. 31. Section 45402 of the Public Resources Code is amended to read:

45402. (a) When acting as the enforcement agency pursuant to Section 45400, the board may contract for the preparation and, if necessary, the implementation of any closure plan or postclosure maintenance plan required by Article 3 (commencing with Section 43500) of Chapter 2 of Part 4 after issuance of an order pursuant to Section 45401 and the failure of the owner or operator to comply on or before the date specified in the order.

(b) The board may, as the enforcement agency, expend funds allocated from the account to carry out this section, to the extent that funds are appropriated by the Legislature for that purpose.

SEC. 32. Section 45403 of the Public Resources Code is amended to read:

45403. (a) When acting as the enforcement agency pursuant to Section 45400, the board may contract for corrective action after the issuance of an order pursuant to Section 45401 and failure of the owner and operator to comply on or before the date specified in the order.

(b) The board, as the enforcement agency, may expend funds allocated from the account to carry out this section, to the extent that funds are appropriated by the Legislature for that purpose.

SEC. 33. Section 45404 of the Public Resources Code is amended to read:

45404. (a) If the board expends any funds pursuant to Section 45402 or 45403, the owner and the operator of the solid waste landfill shall pay the board an amount equal to the amount expended, a reasonable amount for the board's cost of contract administration, and an amount equal to the interest that would have been earned on the expended funds.

(b) The amount of any cost incurred by the board pursuant to this section shall be recoverable in a civil action by the board or, upon request of the board pursuant to Section 40432, by the Attorney General.

(c) Any amounts recovered, except amounts payable to the board for contract administration, shall be deposited in the account.

SEC. 34. Section 45406 of the Public Resources Code is amended to read:

45406. Nothing in this division affects, or shall be construed to duplicate or conflict with, the authority of the state water board or a regional water board to issue enforcement orders or take corrective actions with regard to solid waste landfills pursuant to Division 7 (commencing with Section 13000) of the Water Code.

SEC. 34.5. Section 45407 of the Public Resources Code is repealed.

SEC. 35. Article 7 (commencing with Section 45700) of Chapter 1 of Part 5 of Division 30 of the Public Resources Code is repealed.

SEC. 36. Part 6 (commencing with Section 46000) of Division 30 of the Public Resources Code is repealed.

SEC. 37. Article 3.5 (commencing with Section 47200) is added to Chapter 1 of Part 7 of Division 30 of the Public Resources Code, to read:

Article 3.5. Household Hazardous Waste Grants

47200. (a) Beginning July 1, 1994, the board shall expend funds from the account, upon appropriation by the Legislature, for the making of grants to cities, counties, or other local agencies with responsibility for solid waste management, for local programs to help prevent the disposal of hazardous wastes at disposal sites, including, but not limited to, programs to expand or initially implement household hazardous waste programs. In making grants pursuant to this section, the board shall give priority to funding programs which provide for the following:

(1) New programs for rural areas, underserved areas, and for small cities.

(2) Expansion of existing programs to provide for the collection of additional waste types, innovative or more cost-effective collection

methods, or expanded public education services.

(3) Regional household hazardous waste programs.

(b) The total amount of grants made by the board pursuant to this section shall not exceed, in any one fiscal year, three million dollars ($3,000,000).

47200.5. (a) If the city, county, or local agency with responsibility for solid waste management has already funded the type of program described in Section 47200 locally during the 1992–93 fiscal year, the board shall award the minimum amount of the funds in the account to reimburse that city, county, or local agency for the actual cost of the local program in that fiscal year or an amount from the account which is based upon the proportion that the population of the city, county, or local agency bears to the statewide population, whichever is less. This section does not limit the authority of the board to award grants of funds from the account in excess of, or in addition to, the minimum grants set forth in this section, in accordance with the grant criteria.

(b) The total amount of grants made by the board pursuant to this section shall not exceed four million dollars ($4,000,000).

(c) The board shall advise cities, counties, and local agencies with responsibility for solid waste management of the application period and final filing deadline for the grants authorized to be awarded by the board pursuant to this section.

(d) This section shall become inoperative on July 1, 1994, and as of January 1, 1995, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1995, deletes or extends the dates on which it becomes inoperative and is repealed.

47201. The board shall adopt regulations for implementation of this article, including, but not limited to, criteria for selecting grant recipients.

47202. All expenses incurred by the board in carrying out this article shall be payable from the account. No liability or obligation is imposed upon the state pursuant to this part, and the board shall not incur any liability or obligation beyond the extent to which money is provided in the account for the purposes of this article.

47203. Upon appropriation by the Legislature, the board shall allocate, from the account, an amount not to exceed sixty thousand dollars ($60,000), to the Hazardous Waste Control Account, for expenditure for the 1993–94 fiscal year, to the Department of Toxic Substances Control, for the development and maintenance, jointly with the board, of a data base of all household hazardous waste collection events, facilities, and programs within the state. On and after July 1, 1994, upon appropriation by the Legislature, the board shall allocate an amount from the account of not more than sixteen thousand three hundred dollars ($16,300) in each fiscal year for that purpose.

SEC. 38. Section 47901 of the Public Resources Code is amended to read:

47901. (a) All revenues received by the board shall be deposited

in the specified account in the fund. Any revenue received by the board for which no account is specified shall be deposited in the Integrated Waste Management Account created by Section 48001 in the fund. The board may establish or modify other subaccounts in the account, as appropriate and necessary for proper administration.

(b) Any funds remaining in the Solid Waste Disposal Site Cleanup and Maintenance Account in the Integrated Waste Management Fund shall be transferred to the Integrated Waste Management Account in the Integrated Waste Management Fund, consistent with Section 16346 of the Government Code.

(c) Any expenditures charged to the Solid Waste Disposal Site Cleanup and Maintenance Account in the fund shall be transferred to the Integrated Waste Management Account.

SEC. 39. Section 48000 of the Public Resources Code is amended to read:

48000. (a) Each operator of a disposal facility shall pay a fee quarterly to the State Board of Equalization which is based on the amount, by weight or volumetric equivalent, as determined by the board, of all solid waste disposed of at each disposal site.

(b) (1) For the 1993–94 fiscal year, the fee for the disposal of solid waste shall be seventy-five cents ($0.75) per ton.

(2) Notwithstanding paragraph (1), each disposal facility operator shall forward, between October 1, 1993, and December 31, 1993, an adjusted fee rate of eighteen cents ($0.18) per ton of the fee imposed pursuant to this subdivision to the State Board of Equalization and each disposal facility operator shall apply fifty-seven cents ($0.57) per ton of the fee to any of the following purposes:

(A) The facility's closure and postclosure maintenance fund required by Section 43601.

(B) Programs to divert hazardous waste from solid waste landfills.

(C) Implementation of Part 258 (commencing with Section 258.1) of Title 40 of the Code of Federal Regulations.

(D) Corrective actions at the disposal facility.

(3) During the period from October 1, 1993, to December 31, 1994, inclusive, each disposal facility operator shall provide the board with information concerning the use of that portion of the fee imposed pursuant to this paragraph which, pursuant to subdivision (2), was not required to be forwarded to the State Board of Equalization.

(c) For the 1994–95 fiscal year, the fee for solid waste disposed of shall be one dollar and thirty-four cents ($1.34) per ton. Commencing with the 1995–96 fiscal year, the amount of the fee shall be established by the board at an amount that is sufficient to generate revenues equivalent to the approved budget for that fiscal year, including a prudent reserve, but shall not exceed one dollar and forty cents ($1.40) per ton.

(d) The board shall notify the State Board of Equalization on the first day of the period in which the rate shall take effect of any rate change adopted pursuant to this section.

SEC. 40. Section 48004 of the Public Resources Code is amended to read:

48004. (a) The money in the account shall be used by the board, upon appropriation by the Legislature, for the following purposes:

(1) The administration and implementation of this division by the board.

(2) The state water board's and regional water board's administration and implementation of Division 7 (commencing with Section 13000) of the Water Code at solid waste disposal sites.

(b) It is the intent of the Legislature that an amount which is sufficient to fund state water board and regional water board regulatory activities for solid waste landfills be appropriated from the account by the Legislature in the annual Budget Act. Those persons who are required to pay the fee imposed pursuant to Section 48000 shall not be required to pay the annual fee imposed pursuant to subdivision (d) of Section 13260 of the Water Code with regard to the same discharge.

(c) Notwithstanding subdivisions (a) and (b), if the fee established pursuant to Section 48000 does not generate revenues sufficient to fund the programs specified in this section, or if the amount appropriated by the Legislature for these purposes is reduced, those reductions shall be equally and proportionally distributed between funding for the solid waste programs of the state water board and the regional water boards and the board.

SEC. 41. The heading of Part 23 (commencing with Section 45001) of Division 2 of the Revenue and Taxation Code is amended to read:

PART 23. INTEGRATED WASTE MANAGEMENT FEE LAW

SEC. 42. Section 45001 of the Revenue and Taxation Code is amended to read:

45001. This part shall be known, and may be cited, as the Integrated Waste Management Fee Law.

SEC. 43. Section 45002 of the Revenue and Taxation Code is amended to read:

45002. The collection and administration of the fee imposed pursuant to Section 48000 of the Public Resources Code shall be governed by the definitions contained in Chapter 2 (commencing with Section 40100) of Part 1 of Division 30 of the Public Resources Code, unless expressly superseded by the definitions contained in this part.

SEC. 44. Section 45009 of the Revenue and Taxation Code is amended to read:

45009. "Fee payer" means any person who is liable for payment of the fee imposed pursuant to Section 48000 of the Public Resources Code.

SEC. 45. The heading of Chapter 2 (commencing with Section 45051) of Part 23 of Division 2 of the Revenue and Taxation Code is

amended to read:

CHAPTER 2. THE INTEGRATED WASTE MANAGEMENT FEE

SEC. 46. Section 45051 of the Revenue and Taxation Code is amended to read:

45051. The fee imposed pursuant to Section 48000 of the Public Resources Code shall be administered and collected by the board in accordance with this part.

SEC. 47. Section 45052 of the Revenue and Taxation Code is repealed.

SEC. 48. Section 45101 of the Revenue and Taxation Code is amended to read:

45101. Every person who operates a solid waste landfill required to have a solid waste facilities permit pursuant to Chapter 3 (commencing with Section 44001) of Part 4 of the Public Resources Code shall register with the board.

SEC. 49. Section 45151 of the Revenue and Taxation Code is repealed.

SEC. 50. Section 45151.1 of the Revenue and Taxation Code is amended and renumbered to read:

45151. (a) The fee imposed pursuant to Section 48000 of the Public Resources Code is due and payable to the board quarterly on or before the 25th day of the calendar month following the quarterly period for which the fee is due. Each fee payer shall prepare a return in the form as prescribed by the board, showing the total amount of solid waste subject to the fee, the amount of fee for the period covered by the return, and any other information that the board determines to be necessary.

(b) The fee payer shall deliver the return, together with a remittance of the amount of fee due, to the office of the board on or before the 25th day of the calendar month following the quarterly period for which the fee is due.

SEC. 51. Section 45451 of the Revenue and Taxation Code is amended to read:

45451. (a) If any person fails to pay any amount imposed pursuant to this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien. A lien is subject to Chapter 14 (commencing with Section 7150 of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are due and payable on the following dates:

(1) For amounts disclosed on a report received by the board before the date the return is delinquent, the date the amount would have been due and payable.

(2) For amounts disclosed on a report filed on or after the date the return is delinquent, the date the return is received by the board or

the year following the fee due date pursuant to Section 45151, whichever is later.

(3) For amounts determined under Section 45351, pertaining to jeopardy assessments, the date the notice of the board's finding is mailed or issued.

(4) For all other amounts, the date the assessment is final.

SEC. 51.5. Section 45651.5 is added to the Revenue and Taxation Code, to read:

45651.5. When an amount represented by a person to a customer as constituting reimbursement for fees due under this part is computed upon an amount that is not subject to that fee or is in excess of that fee amount due and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the fee or is in excess of the fee due, shall be remitted by that person to the State Board of Equalization.

SEC. 52. Section 45859 of the Revenue and Taxation Code is amended to read:

45859. The board shall conduct an annual hearing before the full board where industry representatives and individual fee payers are allowed to present their proposals on changes to the Integrated Waste Management Fee Law which may further improve voluntary compliance and the relationship between fee payers and the government.

SEC. 53. Section 45863 of the Revenue and Taxation Code is amended to read:

45863. The board shall, in cooperation with the California Integrated Waste Management Board, the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include the determination of standard timeframes and special review of cases which take more time than the appropriate standard timeframe.

SEC. 54. Section 45866 of the Revenue and Taxation Code is amended to read:

45866. (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit,

restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include integrated waste management fee violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

SEC. 55. Section 45901 of the Revenue and Taxation Code is amended to read:

45901. All fees, interest, and penalties imposed and all amounts of fee required to be paid to the state pursuant to Section 45051 shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer for deposit in the Integrated Waste Management Account in the Integrated Waste Management Fund.

SEC. 56. Section 45902 of the Revenue and Taxation Code is repealed.

SEC. 57. Section 13260 of the Water Code is amended to read:

13260. (a) All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:

(1) Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.

(2) Any person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.

(3) Any person operating, or proposing to construct, an injection well.

(b) No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.

(c) Every person subject to subdivision (a) shall file with the appropriate regional board a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge.

(d) (1) Each person for whom waste discharge requirements have been prescribed pursuant to Section 13263 shall submit an annual fee not to exceed ten thousand dollars ($10,000) according to a reasonable fee schedule established by the state board. Fees shall be calculated on the basis of total flow, volume, number of animals, or area involved.

(2) Any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund which is hereby created. The money in the fund is available for expenditure by the state board,

upon appropriation by the Legislature, for the purposes of carrying out this division.

(3) Any person who would be required to pay the annual fee prescribed by paragraph (1) for waste discharge requirements applicable to discharges of solid waste, as defined in Section 40191 of the Public Resources Code, at a waste management unit that is also regulated under Division 30 (commencing with Section 40000) of the Public Resources Code, and who is or will be subject to the fee imposed pursuant to Section 46801 of the Public Resources Code in the same fiscal year, shall be entitled to a waiver of the annual fee for the discharge of solid waste at the waste management unit imposed by paragraph (1) upon verification by the state board of payment of the fee imposed by Section 48000 of the Public Resources Code, and provided that the fee established pursuant to Section 48000 of the Public Resources Code generates revenues sufficient to fund the programs specified in Section 48004 of the Public Resources Code and the amount appropriated by the Legislature for those purposes is not reduced.

(e) Each report of waste discharge for a new discharge submitted under this section shall be accompanied by a fee equal in amount to the annual fee for the discharge. If waste discharge requirements are issued, the fee shall serve as the first annual fee. If waste discharge requirements are waived pursuant to Section 13269, all or part of the fee shall be refunded.

(f) (1) On or before January 1, 1990, the state board shall adopt, by emergency regulations, a schedule of fees authorized under subdivisions (d) and (j). The total revenue collected each year through annual and filing fees shall be set at an amount equal to the revenue levels set forth in the Budget Act for this activity. The state board shall automatically adjust the annual and filing fees each fiscal year to conform with the revenue levels set forth in the Budget Act for this activity. If the state board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set forth in the Budget Act, the state board may further adjust the annual filing fees to compensate for the over and under collection of revenue.

(2) The emergency regulations adopted pursuant to this subdivision, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised

by the state board.

(g) The state board shall adopt regulations setting forth reasonable time limits within which the regional board shall determine the adequacy of a report of waste discharge submitted under this section.

(h) Each report submitted under this section shall be sworn to, or submitted under penalty of perjury.

(i) The regulations adopted by the state board pursuant to subdivision (f) shall include a provision that annual fees shall not be imposed on those who pay fees under the National Pollutant Discharge Elimination System until the time when those fees are again due, at which time the fees shall become due on an annual basis.

(j) Facilities for confined animal feeding or holding operations, including dairy farms, which have been issued waste discharge requirements or exempted from waste discharge requirements prior to January 1, 1989, are exempt from subdivision (d). If the facility is required to file a report under subdivision (c) after January 1, 1989, the report shall be accompanied by a filing fee, to be established by the state board in accordance with subdivision (f), not to exceed two thousand dollars ($2,000), and the facility shall be exempt from any annual fee.

(k) Any person operating or proposing to construct an oil, gas, or geothermal injection well subject to paragraph (3) of subdivision (a), shall not be required to pay a fee pursuant to subdivision (d), if the injection well is regulated by the Division of Oil and Gas of the Department of Conservation, in lieu of the appropriate California regional water quality control board, pursuant to the memorandum of understanding, entered into between the state board and the Department of Conservation on May 19, 1988. This subdivision shall remain operative until the memorandum of understanding is revoked by the state board or the Department of Conservation.

(*l*) In addition to the report required by subdivision (a), before any person discharges mining waste, the person shall first submit the following to the regional board:

(1) A report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or contamination. The report shall include the results of all tests required by regulations adopted by the board, any test adopted by the Department of Toxic Substances Control pursuant to Section 25141 of the Health and Safety Code for extractable, persistent, and bioaccumulative toxic substances in a waste or other material, and any other tests that the state board or regional board may require, including, but not limited to, tests needed to determine the acid-generating potential of the mining waste or the extent to which hazardous substances may persist in the waste after disposal.

(2) A report that evaluates the potential of the discharge of the mining waste to produce, over the long term, acid mine drainage, the discharge or leaching of heavy metals, or the release of other

hazardous substances.

(m) Except upon the written request of the regional board, a report of waste discharge need not be filed pursuant to subdivision (a) or (c) by a user of reclaimed water that is being supplied by a supplier or distributor of reclaimed water for whom a master reclamation permit has been issued pursuant to Section 13523.1.

SEC. 58. Section 13320 of the Water Code is amended to read:

13320. (a) Within 30 days of any action or failure to act by a regional board under subdivision (c) of Section 13225, Article 4 (commencing with Section 13260) of Chapter 4, Chapter 5 (commencing with Section 13300), Chapter 5.5 (commencing with Section 13370), or Chapter 7 (commencing with Section 13500), any aggrieved person may petition the state board to review that action or failure to act. In case of a failure to act, the 30-day period shall commence upon the refusal of the regional board to act, or 60 days after request has been made to the regional board to act. The state board may, on its own motion, at any time, review the regional board's action or failure to act and also any failure to act under Article 3 (commencing with Section 13240) of Chapter 4.

(b) The evidence before the state board shall consist of the record before the regional board, and any other relevant evidence which, in the judgment of the state board, should be considered to effectuate and implement the policies of this division.

(c) The state board may find that the action of the regional board, or the failure of the regional board to act, was appropriate and proper. Upon finding that the action of the regional board, or the failure of the regional board to act, was inappropriate or improper, the state board may direct that the appropriate action be taken by the regional board, refer the matter to any other state agency having jurisdiction, take the appropriate action itself, or take any combination of those actions. In taking any such action, the state board is vested with all the powers of the regional boards under this division.

(d) If a waste discharge in one region affects the waters in another region and there is any disagreement between the regional boards involved as to the requirements which should be established, either regional board may submit the disagreement to the state board which shall determine the applicable requirements.

(e) If a petition for state board review of a regional board action on waste discharge requirements issued for a solid waste landfill includes a request for a stay of the waste discharge requirements, the state board shall act on the requested stay portion of the petition within 60 days of accepting the petition.

SEC. 58.1. Item 0860-001-387 of Section 2.00 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993) is amended to read:

0860-001-387—For support of State Board of Equalization, for payment to Item 0860-001-001, payable from the Integrated Waste Management Account, Solid Waste Management Fund 289,000

SEC. 58.1.5. Item 0860-001-435 of Section 2.00 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993) is repealed.

SEC. 58.2. Item 3910-001-387 of Section 2.00 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993) is amended to read:

3910-001-387—For support of California Integrated Waste Management Board, payable from the Integrated Waste Management Account, Integrated Waste Management Fund 42,415,000

Schedule:

(a) 10-Planning and Enforcement	15,423,000
(b) 15-Solid Waste Disposal Site Cleanup	8,000,000
(c) 20 Waste Reduction and Resource recovery.....	35,607,000
(d) 25-Tire Recycling.....	2,744,000
(e) 30-Administration.....	9,239,000
(f) Distributed Administration	−9,239,000
(g) Reimbursements	−188,000
(h) Amount payable from California Used Oil Recycling Fund (Public Resources Code Section 48653)	−11,263,000
(i) Amount payable from Tire Recycling Management Fund (Item 3910-001-226)	−2,744,000
(j) Amount payable from Recycling Market Development Revolving Loan Account (Item 3910-001-281)	−5,164,000

Provisions:

1. Notwithstanding Section 42145 of the Public Resources Code, the board may offset the costs of administering the revolving loan program for Recycling Market Development Zones with funds appropriated in this item.
2. The board shall not increase above $0.75 per ton the fees authorized by Section 48000 of the Public Resources Code sooner than 30 days after submitting to the Chair of the Joint Legislative Budget Committee and the legislative fiscal committees a report that explains the need for

increasing the fees. The report shall identify (a) the extent of the shortfall in the Integrated Waste Management Account (IWMA), including information on current and projected revenues to, and expenditures from, the IWMA, (b) the reasons for the shortfall in the IWMA, (c) an evaluation of the options for addressing the shortfall in the IWMA, and (d) the board's reasons for increasing fees, rather than implementing other identified options, to address the shortfall.

SEC. 58.2.5. Item 3910-001-435 of Section 2.00 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993) is repealed.

SEC. 58.3. Item 3910-101-435 of Section 2.00 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993) is amended and renumbered to read:

3910-101-387—For local assistance, California Integrated Waste Management Board, payable from the Integrated Waste Management Account, Integrated Waste Management Fund 5,500,000

SEC. 58.4. Item 3940-001-001 of Section 2.00 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993) is amended to read:

3940-001-001--For support of State Water Resources Control Board 27,282,000
Schedule:
(a) 10-Water Quality 220,426,000
(b) 20-Water Rights 7,865,000
(c) 30.01-Administration 11,433,000
(d) 30.02-Distributed Administration.. —11,433,000
(e) Reimbursements ..... —6,175,000
(f) Amount payable from the Leaking Underground Storage Tank Cost Recovery Fund (Item 3940-001-025) ..... —3,800,000
(g) Amount payable from the Waste Discharge Permit Fund (Item 3940-001-193) ..... —9,976,000
(h) Amount payable from the Environmental Protection Trust Fund (Item 3940-001-225) ..... —1,909,000
(i) Amount payable from the Public Resources Account, Cigarette and Tobacco Products Surtax Fund

(Item 3940-001-235) ..... —761,000
(j) Amount payable from the Bay Protection and Toxic Cleanup Fund (Item 3940-001-282) ..... —4,520,000
(jx) Amount payable from the Integrated Waste Management Account, Integrated Waste Management Fund (Item 3940-001-387) ..... —4,792,000
(k) Amount payable from the Underground Storage Tank Tester Account (Item 3940-001-436) ..... —85,000
(*l*) Amount payable from the Underground Storage Tank Cleanup Fund (Item 3940-001-439) ..... —133,465,000
(m) Amount payable from the Underground Storage Tank Fund (Item 3940-001-475) ..... —1,022,000
(n) Amount payable from the Surface Impoundment Assessment Account, General Fund (Item 3940-001-482) ..... —302,000
(o) Amount payable from the 1984 State Clean Water Bond Fund (Item 3940-001-740) ..... —2,977,000
(p) Amount payable from the 1986 Water Conservation and Water Quality Bond Fund (Item 3940-001-744) ..... —287,000
(q) Amount payable from the 1988 Clean Water and Water Reclamation Fund (Item 3940-001-764) .... —645,000
(r) Amount payable from the Federal Trust Fund (Item 3940-001-890) ..... —30,333,000

Provisions:

1. Notwithstanding any other provisions of law, upon approval and order of the Director of Finance, the State Water Resources Control Board may borrow sufficient funds, from special funds which otherwise provide support for the board, for cash purposes. Any such loans are to be repaid with interest at the Pooled Money Investment Account rate.
2. The State Water Resources Control Board shall establish an Economic Impact Studies and Evaluation Unit that is responsible for evaluating all proposed orders and decisions of the board with respect to their economic impact

pursuant to the board's general powers and responsibilities as delineated in Division 7 (commencing with Section 13000) of the Water Code. The unit shall be composed of four positions, three of which shall be economists and one of which shall be a secretary. This unit shall be managed by, and shall report to, the executive officer of the board. These positions shall be established with existing funds.

3. Of the funds appropriated in this item, one-half of the amount shall be available for expenditure through December 31, 1993. The remainder of the funds appropriated in this item shall be available after December 31, 1993, only if the State Water Resources Control Board has complied with Provision 2 of this item.

SEC. 58.5. Item 3940-001-193 of Section 2.00 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993) is amended to read:

3940-001-193—For support of State Water Resources Control Board, for payment to Item 3940-001-001, payable from the Waste Discharge Permit Fund 9,936,000

SEC. 58.6. Item 3940-001-435 of Section 2.00 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993) is amended and renumbered to read:

3940-001-387—For support of State Water Resources Control Board, for payment to Item 3940-001-001, payable from the Integrated Waste Management Account, Integrated Waste Management Fund 4,792,000

SEC. 59. Of the amount appropriated by Item 3910-001-387 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993) as amended by this act, in addition to any other approved expenditures for those purposes, the California Integrated Waste Management Board shall expend five million seven hundred fifty thousand dollars ($5,750,000) of the amount appropriated for program 20 for source reduction, public education, and market development programs. The California Integrated Waste Management Board shall expend these funds to augment existing programs and shall not use the funds for administrative purposes.

SEC. 60. The sum of seventy-five thousand dollars ($75,000) is hereby appropriated to the California Integrated Waste Management Board from the California Used Oil Recycling Fund for ex-

penditure during the 1993–94 fiscal year for the purpose of implementing a pilot program for funding claims submitted by state agencies for providing price preferences for the purchase of recycled products.

SEC. 61. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 62. This act shall become operative only if Assembly Bill 2136 of the 1993–94 Regular Session of the Legislature is also enacted and takes effect on or before January 1, 1994.

SEC. 63. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to streamline and coordinate the state's solid waste regulatory process, thereby better protecting public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 657

An act to amend Section 1704.5 of the Health and Safety Code, relating to breast cancer.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1704.5 of the Health and Safety Code is amended to read:

1704.5. (a) Physicians and surgeons shall inform patients being treated for any form of breast cancer of the alternative efficacious methods of treatment by providing the patient with the written summary described in subdivision (c).

(b) The failure of a physician and surgeon to inform a patient, by means of a standardized written summary developed by the department on the recommendation of the Cancer Advisory Council in accordance with subdivision (c), in layman's language and in a language understood by the patient, of alternative efficacious methods of treatment that may be medically viable, including surgical, radiological, or chemotherapeutic treatments or

combinations thereof, when the patient is being treated for any form of breast cancer, constitutes unprofessional conduct within the meaning of Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(c) (1) A standardized written summary in layman's language and in a language understood by the patient shall be developed by the department with the recommendations of the Cancer Advisory Council, and shall be printed and made available by the Medical Board of California to physicians and surgeons, for the purposes of informing the patient of the advantages, disadvantages, risks and descriptions of the procedures with regard to medically viable and efficacious alternative methods of treatment for breast cancer as required by subdivision (a).

(2) Commencing no later than January 1, 1995, and every three years thereafter, the department shall review the written summary and shall revise the written summary if the department determines that new or revised information should be included in the written summary.

(3) At the next revision of the standardized written summary required by this section, the department shall incorporate all of the following additional information:

(A) Information regarding methods of treatment for breast cancer that are in the investigational or clinical trial stage and are recognized for treatment by the Physician's Data Query of the National Cancer Institute.

(B) Available reference numbers, including, but not limited to, the "800" telephone numbers for the National Cancer Institute and the American Cancer Society, in order for breast cancer patients to obtain the most recent information.

(C) A discussion of breast reconstruction surgery, including, but not limited to, problems, benefits, and alternatives.

(D) Statistics on the incidence of breast cancer.

(d) Prior to performance of a biopsy, the physician and surgeon shall note on the patient's chart that he or she has given the patient the written summary required by this section.

(e) The Medical Board of California shall establish a distribution system for the breast cancer treatment alternatives written summary that is linked to the process of biennial renewal of physician and surgeon licenses.

CHAPTER 658

An act to add Sections 1704.55 and 1704.75 to the Health and Safety Code, relating to cancer.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1704.55 is added, immediately following Section 1704.5, to the Health and Safety Code, to read:

1704.55. (a) Every person or entity who owns or operates a health facility or a clinic, or who is licensed as a physician and surgeon and rents or owns the premises where his or her practice is located, shall cause a sign or notice to be posted where a physician and surgeon performs breast cancer screening or biopsy as an outpatient service, or in a reasonably proximate area to where breast cancer screening or biopsy is performed. A sign or notice posted at the patient registration area of the health facility, clinic, or physician and surgeon's office shall constitute compliance with this section.

(b) The sign or notice shall read as follows:

"BE INFORMED"

"If you are a patient being treated for any form of breast cancer, or prior to performance of a biopsy for breast cancer, your physician and surgeon is required to provide you a written summary of alternative efficacious methods of treatment, pursuant to Section 1704.5 of the California Health and Safety Code."

"The information about methods of treatment was developed by the State Department of Health Services to inform patients of the advantages, disadvantages, risks, and descriptions of procedures."

The sign shall be not less than eight and one-half inches by 11 inches and shall be conspicuously displayed so as to be readable. The words "BE INFORMED" shall not be less than one-half inch in height and shall be centered on a single line with no other text. The message on the sign shall appear in English, Spanish, and Chinese.

SEC. 2. Section 1704.75 is added, immediately following Section 1704.7, to the Health and Safety Code, to read:

1704.75. (a) Every person or entity who owns or operates a health facility or a clinic, or who is licensed as a physician and surgeon and rents or owns the premises where his or her practice is located, shall cause a sign or notice to be posted where prostate cancer screening or treatment is performed by any physician and surgeon, or in a reasonably proximate area to where prostate cancer screening or treatment is performed. A sign or notice posted at the

patient registration area of the health facility, clinic, or physician and surgeon's office shall constitute compliance with this section.

(b) The sign or notice shall read as follows:

"BE INFORMED"

"If you are a patient being treated for any form of prostate cancer, or prior to performance of a biopsy for prostate cancer, your physician and surgeon is urged to provide you a written summary of alternative efficacious methods of treatment, pursuant to Section 1704.7 of the California Health and Safety Code."

"The information about methods of treatment was developed by the State Department of Health Services to inform patients of the advantages, disadvantages, risks, and descriptions of procedures."

The sign shall be not less than eight and one-half inches by 11 inches and shall be conspicuously displayed so as to be readable. The words "BE INFORMED" shall not be less than one-half inch in height and shall be centered on a single line with no other text. The message on the sign shall appear in English, Spanish, and Chinese.

CHAPTER 659

An act to amend Section 56.10 of the Civil Code, to amend Sections 1635, 1635.1, 1644, and 1644.5 of the Health and Safety Code, and to amend Section 18548 of the Revenue and Taxation Code, relating to health.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care shall disclose medical information regarding a patient of the provider without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding

before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) When otherwise specifically required by law.

(c) A provider of health care may disclose medical information as follows:

(1) The information may be disclosed to providers of health care or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider as necessary to assist the other provider in obtaining payment for health care services rendered by that provider to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way which would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, or to licensed health care service plans, or to professional

standards review organizations, or to utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, or to persons or organizations insuring, responsible for, or defending professional liability which a provider may incur, if the committees, agents, plans, organizations, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way which would permit identification of the patient.

(8) A provider of health care that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information which:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided it may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy which the patient seeks coverage by or benefits from, if the information was created by the provider of health care as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a group practice prepayment health care service plan by providers which contract

with the plan and may be transferred among providers which contract with the plan, for the purpose of administering the plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) To a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms "tissue bank" and "tissue" have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) When the disclosure is otherwise specifically authorized by law.

SEC. 2. Section 1635 of the Health and Safety Code is amended to read:

1635. (a) "Donor" is an individual, living or deceased, from whom tissue is removed.

(b) "Person" is an individual, corporation, business trust, estate trust, partnership, association, state or local government, or subdivision or agency thereof, or any other legal entity.

(c) "Tissue" is any human cell, group of cells, tissue or organ including the cornea, sclera, or vitreous humor and other segments of, or the whole eye, bones, skin, arteries, sperm, blood, other fluids, and any other portion of a human body.

(d) "Tissue bank" is any place, establishment, or institution that collects, processes, stores, or distributes tissue for transplantation into human beings.

(e) "Transplantation" is the act or process of transferring tissue, including by ingestion, from a donor to the body of the donor or another human being.

(f) "State department" is the State Department of Health Services.

SEC. 3. Section 1635.1 of the Health and Safety Code is amended to read:

1635.1. (a) Except as provided in subdivision (b), every tissue bank operating in California on or after July 1, 1992, shall have a current and valid tissue bank license issued or renewed by the state department pursuant to Section 1639.2 or 1639.3.

(b) This chapter shall not apply to any of the following:

(1) The collection, processing, storage, or distribution of human whole blood or its derivatives by blood banks licensed pursuant to Chapter 4 (commencing with Section 1600) or any person exempt from licensure under that chapter.

(2) The collection, processing, storage, or distribution of tissue for autopsy, biopsy, training, education, or for other medical or scientific research or investigation, where transplantation of the tissue is not intended or reasonably foreseeable.

(3) The collection of tissue by an individual physician and surgeon from his or her patient or the implantation of tissue by an individual physician and surgeon into his or her patient. This exemption shall not be interpreted to apply to any processing or storage of the tissue, except for the processing and storage of semen by an individual physician and surgeon when the semen was collected by that physician and surgeon from a semen donor or obtained by that physician and surgeon from a tissue bank licensed under this chapter.

(4) The collection, processing, storage, or distribution of fetal tissue or tissue derived from a human embryo or fetus.

(5) The collection, processing, storage, or distribution by an organ procurement organization (OPO), as defined in Section 485.302 of Title 42 of the Code of Federal Regulations, if the OPO, at the time of collection, processing, storage, and distribution of the organ, has been designated by the Secretary of Health and Human Services as an OPO, pursuant to Section 485.305 of Title 42 of the Code of Federal Regulations, and meets the requirements of Sections 485.304 and 485.306 of Title 42 of the Code of Federal Regulations, as applicable.

(6) The storage of prepackaged, freeze-dried bone by a general acute care hospital.

SEC. 4. Section 1644 of the Health and Safety Code is amended to read:

1644. For purposes of this chapter, "donor," "person," "tissue," "transplantation," and "state department" shall have the meaning as defined for those terms in Section 1635.

SEC. 5. Section 1644.5 of the Health and Safety Code is amended to read:

1644.5. (a) No tissues shall be transferred into the body of another person by means of transplantation, unless the donor of the tissues has been screened and found nonreactive by laboratory tests for evidence of infection with HIV, agents of viral hepatitis (HBV and HCV), human T lymphotrophic virus-1 (HTLV-1), and syphilis. The state department may adopt regulations requiring additional screening tests of donors or tissues when, in the opinion of the state department, the action is necessary for the protection of the public,

donors, or recipients.

(b) Notwithstanding subdivision (a), infectious disease screening of blood and blood products shall be carried out solely in accordance with Article 2 (commencing with Section 1601) of Chapter 4.

(c) All donors of sperm shall be screened and found nonreactive as required under subdivision (a), except that a recipient of sperm, from a sperm donor known to the recipient, may waive a second or other repeat testing of that donor if the recipient is informed of the requirements for testing donors under this section and signs a written waiver.

(d) Subdivision (a) shall not apply to the transplantation of tissue from a donor who has not been tested or, with the exception of HIV, has been found reactive for the infectious diseases listed in subdivision (a) or for which the state department has, by regulation, required additional screening tests, if both of the following conditions are satisfied:

(1) The physician and surgeon performing the transplantation has determined any one or more of the following:

(A) Without the transplantation the intended recipient will most likely die during the period of time necessary to obtain other tissue or to conduct the required tests.

(B) The intended recipient already is diagnosed with the infectious disease for which the donor has tested positive.

(C) The symptoms from the infectious disease for which the donor has tested positive will most likely not appear during the intended recipient's likely lifespan after transplantation with the tissue or may be treated prophylactically if they do appear.

(2) Consent for the use of the tissue has been obtained from the recipient, if possible, or if not possible, from a member of the recipient's family, or the recipient's legal guardian. For purposes of this section, "family" shall mean spouse, adult son or daughter, either parent, adult brother or sister, or grandparent.

(e) Tissues from donors who test reactive for agents of viral hepatitis, (HBV and HCV), human T lymphotrophic virus-1 (HTLV-1), or syphilis shall not be used in California for transplantation by means of therapeutic insemination or ingestion.

SEC. 6. Section 18548 of the Revenue and Taxation Code is amended to read:

18548. All money transferred to the California Breast Cancer Research Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) To the State Department of Health Services. These funds shall be expended for the purpose of conducting research relating to the prevention, cure, screening, and treatment of breast cancer disease through contracts or grants developed and awarded as determined by the State Department of Health Services. The state department

shall allocate twenty thousand dollars ($20,000) each year to promote the California Breast Cancer Research Fund.

CHAPTER 660

An act to amend Sections 30101 and 30461 of, to add Section 30461.6 to, and to add and repeal Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of Division 2 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares as follows:

(a) Breast cancer is a significant threat to the health of women. Breast cancer is the most common form of cancer in women, and causes the death of a woman in the United States every 12 minutes.

(b) The incidence of breast cancer continues to increase at a dramatic rate. During the past decade, the incidence has increased by 30 percent. In 1960, one woman in 20 developed breast cancer over the course of her lifetime. By 1992, the probability had increased to one woman in eight. At the current rate of increase, in the year 2000, one woman in six will develop breast cancer over the course of her lifetime.

(c) Breast cancer exacts an enormous economic toll on our society, including over two billion dollars ($2,000,000,000) in direct medical costs, and over eight billion dollars ($8,000,000,000) in both direct medical and indirect costs.

(d) Medical experts still do not know the cause of breast cancer, or how to prevent breast cancer.

(e) Without access to health care and early detection services, the 2.7 million women in California without health care insurance face an unacceptable risk of discovering that they suffer from breast cancer only after the malignancy has reached an advanced and deadly stage.

(f) The State of California must take the lead in combating the increasingly rapid spread of breast cancer and the current lack of knowledge with respect to breast cancer's cause and cure, and effective methods of prevention.

(g) This act shall be known and may be cited as the Breast Cancer Act of 1993. It is the intent of the Legislature in enacting this act to fund essential research and services with respect to the cause, cure, detection, and prevention of breast cancer, and breast cancer education.

SEC. 2. Section 30101 of the Revenue and Taxation Code is amended to read:

30101. Every distributor shall pay a tax upon his or her distributions of cigarettes at the rate of one and one-half mills ($0.0015) for the distribution after 4 o'clock a.m. on July 1, 1959, of each cigarette until 12:01 o'clock a.m. on August 1, 1967, at the rate of three and one-half mills ($0.0035) for the distribution of each cigarette on and after August 1, 1967, until 12:01 o'clock a.m. on October 1, 1967, at the rate of five mills ($0.005) on and after 12:01 o'clock a.m. on October 1, 1967, until 12:01 a.m. on January 1, 1994, and at the rate of six mills ($0.006) on and after 12:01 a.m. on January 1, 1994.

SEC. 3. Article 3 (commencing with Section 30131) is added to Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, to read:

Article 3. Floor Stocks and Indicia Adjustment Taxes

30131. For the privilege of holding or storing cigarettes for sale, use, or consumption, a floor tax is hereby imposed upon every dealer and every wholesaler at the rate of one mill ($0.001) for each cigarette in his or her possession or under his or her control in this state at 12:01 a.m. on January 1, 1994.

30131.1. Every dealer and every wholesaler shall take an inventory as of 12:01 a.m. on January 1, 1994, of all cigarettes in his or her possession or under his or her control. He or she shall file a report with the board on or before February 25, 1994, in a form which the board may prescribe, showing the number of cigarettes in his or her possession or under his or her control at 12:01 a.m. on January 1, 1994. The amount of tax required to be paid on the cigarettes shall be computed and shown on the dealer's or wholesaler's return.

30131.2. For the privilege of distributing cigarettes as a licensed distributor and for holding or storing cigarettes for sale, use, or consumption, a floor tax and cigarette indicia adjustment tax is hereby imposed upon every licensed distributor as follows:

(a) In the amount of two and one-half cents ($0.025) for each California cigarette tax stamp or meter impression bearing the designation "25," in the amount of two cents ($0.02) for each California cigarette tax stamp or meter impression bearing the designation "20," and in the amount of one cent ($0.01) for each California cigarette tax stamp bearing the designation "10" which is affixed to any package of cigarettes in the possession of the licensed distributor or under his or her control at 12:01 a.m. on January 1, 1994.

(b) In the amount of two and one-half cents ($0.025) for each unaffixed California cigarette tax stamp bearing the designation "25," two cents ($0.02) for each unaffixed California cigarette tax stamp bearing the designation "20," and one cent ($0.01) for each unaffixed California cigarette tax stamp bearing the designation "10" and twenty cents ($0.20) for each unused meter register unit, in the possession of the licensed distributor or under his or her control at 12:01 a.m. on January 1, 1994.

30131.3. (a) Every licensed distributor shall take an inventory as of 12:01 a.m. on January 1, 1994, of all packages of cigarettes to which are affixed California cigarette tax stamps or meter impressions and all unaffixed California cigarette tax stamps and unused meter register units in his or her possession or under his or her control. Every licensed distributor shall file a report with the board on or before February 25, 1994, in a form which the board may prescribe, showing:

(1) The number of California cigarette tax stamps and meter impressions, with the designations thereof, which were affixed to packages of cigarettes in his or her possession or under his or her control at 12:01 a.m. on January 1, 1994.

(2) The number of unaffixed California cigarette tax stamps, with the designations thereof, and unused meter register units which were in his or her possession or under his or her control at 12:01 a.m. on January 1, 1994.

(b) The amount of tax required to be paid with respect to the stamps, meter impressions, and meter register units shall be computed and shown on the distributor's return.

30131.4. The taxes required to be paid by this article are due and payable on or before February 25, 1994. Payments shall be made by remittances payable to the board and the payments shall accompany the reports required to be filed by this article. Any amount required to be paid by this article which is not timely paid shall bear interest at the rate and by the method established pursuant to Section 30202 from February 25, 1994, until paid, and shall be subject to determination, and redetermination, and any penalties provided with respect to determinations and redeterminations.

30131.5. This article shall remain in effect only until January 1, 1997, and as of that date is repealed.

SEC. 4. Section 30461 of the Revenue and Taxation Code is amended to read:

30461. All amounts required to be paid to the state under this part shall be paid to the board in the form of remittances payable to the State Board of Equalization. Except as provided in Section 30461.6, the board shall transmit the payments to the Treasurer to be deposited in the State Treasury to the credit of the Cigarette Tax Fund, which is hereby created.

SEC. 5. Section 30461.6 is added to the Revenue and Taxation Code, to read:

30461.6. Notwithstanding Section 30461, the board shall transmit the revenue derived from the increase in the cigarette tax rate of one mill ($0.001) per cigarette imposed by Section 30101 on and after January 1, 1994, and from the taxes imposed pursuant to Article 3 (commencing with Section 30131) of Chapter 2, to the Treasurer to be deposited in the State Treasury to the credit of the Breast Cancer Fund, which fund is hereby created. The moneys in the fund shall, upon appropriation by the Legislature, be allocated to the board for reimbursement of all costs incurred in connection with the collection

of the taxes imposed pursuant to Article 3 (commencing with Section 30131) of Chapter 2 and the balance shall be allocated as follows:

(a) Forty-five percent to be allocated for research with respect to the cause, cure, and prevention of breast cancer, as follows:

(1) Forty percent to the University of California's scientific advisory committee established pursuant to Article 8.7 (commencing with Section 424.10) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, for the awarding of grants to researchers for research with respect to the cause, cure, prevention, and early detection of breast cancer and with respect to the cultural barriers to accessing the health care system for early detection and treatment of breast cancer, based on the merits of specific proposals and specific research priorities established by a panel of experts convened by the committee. The panel of experts shall consist of researchers from public and private institutions, and representatives from voluntary, nonprofit health organizations, health care professional organizations, breast cancer survivor groups, and breast cancer-related advocacy groups. It is the intent of the Legislature that the membership of the panel broadly reflect the ethnic, racial, cultural, economic, and geographic diversity and gender balance of the state. The panel of experts shall be convened and shall establish specific research priorities prior to the scientific advisory committee issuing a Request For Proposals (RFP) with respect to research grants, and may be reconvened by the scientific advisory committee as necessary.

(2) Five percent to the Cancer Surveillance Section of the State Department of Health Services for the collection of breast cancer-related data and the conduct of breast cancer related epidemiological research by the state cancer registry established pursuant to Section 211.3 of the Health and Safety Code.

(b) Forty-five percent to be allocated to the breast and cervical cancer control program undertaken by the state pursuant to Public Law 101-354 for the provision of early breast cancer detection services for uninsured and underinsured women. Those services shall include all of the following:

(1) Mammography screening of women for breast cancer as an early detection health care measure.

(2) Medical referral of screened women for definitive diagnosis, including sonograms or biopsy, and, to the extent practical, followup services for those women. If followup services cannot be provided, then assistance shall be provided to help the person obtain necessary followup services.

(3) Educational and training programs for health care professionals, including allied health care professionals, to improve the detection and control of breast cancer, and communication with breast cancer patients after diagnosis.

(4) Outreach to groups with high proportions of uninsured women.

(c) Ten percent to be allocated to the State Department of Health

Services for a campaign to increase awareness and provide education with respect to breast cancer, including steps to ensure early detection. In developing this campaign, the department shall consult with an advisory panel appointed by the State Director of Health Services and consisting of breast cancer researchers, and representatives from voluntary, nonprofit health organizations, health care professional organizations, breast cancer survivor groups, and breast cancer-related advocacy groups. It is the intent of the Legislature that the membership of the panel broadly reflect the ethnic, racial, cultural, economic, and geographic diversity and gender balance of the state.

SEC. 6. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on January 1, 1994.

CHAPTER 661

An act to amend Section 685 of, and to add Sections 45, 1531, 1776.8, and 12976.5 to, the Insurance Code, and to add Sections 12602 and 30461.6 to, and to repeal Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of Division 2 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 1, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 45 is added to the Insurance Code, to read:

45. (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfer shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, a Federal Reserve Wire Transfer (Fedwire), or an international funds transfer, at the option of the insurer.

(b) For purposes of this section:

(1) "Automated clearinghouse" means any federal reserve bank, or an organization established by agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and that authorizes an electronic transfer of funds between those banks or bank accounts.

(2) "Automated clearinghouse debit" means a transaction in which any department of the state, through its designated depository

bank, originates an automated clearinghouse transaction debiting the taxpayer's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction by the taxpayer shall be paid by the state.

(3) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the taxpayer, through its own bank, originates an entry crediting the state's bank account and debiting its own bank account. Banking costs incurred by the state for the automated clearinghouse credit transaction may be charged to the taxpayer.

(4) "Fedwire" means any transaction originated by the taxpayer and utilizing the national electronic payment system to transfer funds through federal reserve banks, pursuant to which the taxpayer debits its own bank account and credits the state's bank account. Electronic funds transfers may be made by Fedwire only if prior approval is obtained from the department and the taxpayer is unable, for reasonable cause, to make payments pursuant to paragraph (2) or (3). Banking costs charged to the taxpayer and to the state may be charged to the taxpayer.

(5) "International funds transfer" means any transaction originated by the taxpayer and utilizing "SWIFT," the international electronic payment system to transfer funds in which the taxpayer debits its own bank account, and credits the funds to a United States bank that credits the state's bank account. Banking costs charged to the taxpayer and to the state may be charged to the taxpayer.

SEC. 2. Section 685 of the Insurance Code is amended to read:

685. (a) When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon California insurers, or upon the agents or representatives of those insurers, that are in excess of the taxes, licenses and other fees, in the aggregate, or that are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of those insurers, of that other state or country under the statutes of this state, so long as the laws of the other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties, deposit requirements or other material obligations, prohibitions, or restrictions, of whatever kind, shall be imposed upon the insurers, or upon the agents or representatives of those insurers, of the other state or country doing business or seeking to do business in California. Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of the other state or country on California insurers or their agents or representatives shall be deemed to be imposed by that state or country within the meaning of this article.

(b) On and after January 1, 1994, and before January 1, 1995, every person whose annual taxes exceed fifty thousand dollars ($50,000) shall make payment by electronic funds transfer. On and after January 1, 1995, every person whose annual taxes exceed twenty thousand dollars ($20,000) shall make payment by electronic funds transfer. The insurer shall choose one of the acceptable methods described in Section 45 for completing the electronic funds transfer.

(c) Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) (1) Any person required to remit taxes by electronic funds transfer pursuant to this section who remits those taxes by means other than an appropriate electronic funds transfer, shall be assessed a penalty in an amount equal to 10 percent of the taxes due at the time of the payment.

(2) If the Department of Insurance finds that a person's failure to make a timely payment is due to reasonable cause or circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the person shall be relieved of the penalty provided in paragraph (1).

(3) Any person seeking to be relieved of the penalty provided in paragraph (1) shall file a statement under penalty of perjury setting forth the facts upon which the person bases his or her claim for relief with the Department of Insurance.

SEC. 3. Section 1531 is added to the Insurance Code, to read:

1531. (a) On and after January 1, 1994, and before January 1, 1995, every exchange and its corporate attorney in fact that is considered a single unit whose annual taxes exceed fifty thousand dollars ($50,000) shall make payment by electronic funds transfer. On and after January 1, 1995, every exchange and its corporate attorney in fact that is considered a single unit whose annual taxes exceed twenty thousand dollars ($20,000) shall make payment by electronic funds transfer. The insurer shall choose one of the acceptable methods described in Section 45 for completing the electronic funds transfer.

(b) Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(c) (1) Any person required to remit taxes by electronic funds transfer pursuant to this section who remits those taxes by means other than an appropriate electronic funds transfer, shall be assessed a penalty in an amount equal to 10 percent of the taxes due at the time of the payment.

(2) If the Department of Insurance finds that a person's failure to make a timely payment is due to reasonable cause or circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the person shall be relieved of the penalty provided in paragraph (1).

(3) Any person seeking to be relieved of the penalty provided in paragraph (1) shall file a statement under penalty of perjury setting forth the facts upon which the person bases his or her claim for relief with the Department of Insurance.

SEC. 4. Section 1776.8 is added to the Insurance Code, to read:

1776.8. (a) On and after January 1, 1994, and before January 1, 1995, every person whose annual taxes exceed fifty thousand dollars ($50,000) shall make payment by electronic funds transfer. On and after January 1, 1995, every person whose annual taxes exceed twenty thousand dollars ($20,000) shall make payment by electronic funds transfer. The insurer shall choose one of the acceptable methods described in Section 45 for completing the electronic funds transfer.

(b) Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(c) (1) Any person required to remit taxes by electronic funds transfer pursuant to this section who remits those taxes by means other than an appropriate electronic funds transfer, shall be assessed a penalty in an amount equal to 10 percent of the taxes due at the time of the payment.

(2) If the Department of Insurance finds that a person's failure to make a timely payment is due to reasonable cause or circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care, and in the absence of willful neglect, the person shall be relieved of the penalty provided in paragraph (1).

(3) Any person seeking to be relieved of the penalty provided in paragraph (1) shall file a statement under penalty of perjury setting forth the facts upon which the person bases his or her claim for relief with the Department of Insurance.

SEC. 5. Section 12976.5 is added to the Insurance Code, to read:

12976.5. (a) On and after January 1, 1994, and before January 1, 1995, every person whose annual taxes exceed fifty thousand dollars ($50,000) shall make payment by electronic funds transfer. On and after January 1, 1995, every person whose annual taxes exceed twenty thousand dollars ($20,000) shall make payment by electronic funds transfer. The insurer shall choose one of the acceptable methods described in Section 45 for completing the electronic funds transfer.

(b) Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur

on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(c) (1) Any person required to remit taxes by electronic funds transfer pursuant to this section who remits those taxes by means other than an appropriate electronic funds transfer, shall be assessed a penalty in an amount equal to 10 percent of the taxes due at the time of the payment.

(2) If the Department of Insurance finds that a person's failure to make a timely payment is due to reasonable cause or circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the person shall be relieved of the penalty provided in paragraph (1).

(3) Any person seeking to be relieved of the penalty provided in paragraph (1) shall file a statement under penalty of perjury setting forth the facts upon which the person bases his or her claim for relief with the Department of Insurance.

SEC. 6. Section 12602 is added to the Revenue and Taxation Code, to read:

12602. (a) On and after January 1, 1994, and before January 1, 1995, each insurer whose annual taxes exceed fifty thousand dollars ($50,000) shall make payment by electronic funds transfer, as defined by Section 45 of the Insurance Code. On and after January 1, 1995, each insurer whose annual taxes exceed twenty thousand dollars ($20,000) shall make payment by electronic funds transfer. The insurer shall choose one of the acceptable methods described in Section 45 of the Insurance Code for completing the electronic funds transfer.

(b) Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(c) (1) Any person required to remit taxes by electronic funds transfer pursuant to this section who remits those taxes by means other than an appropriate electronic funds transfer, shall be assessed a penalty in an amount equal to 10 percent of the taxes due at the time of the payment.

(2) If the Department of Insurance finds that a person's failure to make a timely payment is due to reasonable cause or circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the person shall be relieved of the penalty provided in paragraph (1).

(3) Any person seeking to be relieved of the penalty provided in paragraph (1) shall file a statement under penalty of perjury setting forth the facts upon which the person bases his or her claim for relief with the Department of Insurance.

SEC. 7. Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as added

by Assembly Bill 478, is repealed.

SEC. 8. Section 30461.6 is added to the Revenue and Taxation Code, to read:

30461.6. (a) Notwithstanding Section 30461, the board shall transmit the revenue derived from the increase in the cigarette tax rate of one mill ($0.001) per cigarette imposed by Section 30101 on and after January 1, 1994, to the Treasurer to be deposited in the State Treasury to the credit of the Breast Cancer Fund, which fund is hereby created. The moneys in the fund shall, upon appropriation by the Legislature, be allocated as follows:

(1) Fifty percent to be allocated for research with respect to the cause, cure, treatment, earlier detection, and prevention of breast cancer as follows:

(A) Ten percent to the Cancer Surveillance Section of the State Department of Health Services for the collection of breast cancer-related data and the conduct of breast cancer-related epidemiological research by the state cancer registry established pursuant to Section 211.3 of the Health and Safety Code.

(B) Ninety percent to the Breast Cancer Research Program, which is hereby created at the University of California, for the awarding of grants and contracts to researchers for research with respect to the cause, cure, treatment, prevention, and earlier detection of breast cancer and with respect to the cultural barriers to accessing the health care system for early detection and treatment of breast cancer.

(2) (A) Fifty percent to be allocated to the Breast Cancer Control Program, which is hereby created for the provision of early breast cancer detection services for uninsured and underinsured women. The Breast Cancer Control Program shall be established in the State Department of Health Services and shall be administered by the breast and cervical cancer control program within the state department in accordance with Public Law 101-354. Those services shall include all of the following:

(i) Screening, including mammography, of women for breast cancer as an early detection health care measure.

(ii) After screening, medical referral of screened women and services necessary for definitive diagnosis, including nonradiological techniques or biopsy.

(iii) If a positive diagnosis is made, then assistance and advocacy shall be provided to help the person obtain necessary treatment.

(iv) Outreach and health education activities to ensure that uninsured and underinsured women are aware of and appropriately utilize the services provided by the Breast Cancer Control Program.

(B) Any entity funded by the Breast Cancer Control Program shall coordinate with other local providers of breast cancer screening, diagnostic, followup, education, and advocacy services to avoid duplication of effort. Any entity funded by the program shall comply with any applicable state and federal standards regarding mammography quality assurance.

(C) Administrative costs of the State Department of Health Services shall not exceed 10 percent of the funds allocated to the Breast Cancer Control Program created pursuant to subparagraph (A). Indirect costs of the entities funded by this program shall not exceed 12 percent. The department shall define 'indirect costs' in consultation with the advisory panel established pursuant to subparagraph (F).

(D) Any entity funded by the Breast Cancer Control Program shall collect data and maintain records that are determined by the State Department of Health Services to be necessary to facilitate the state department's ability to monitor and evaluate the effectiveness of the entities and the program. Commencing with the program's second year of operation, the State Department of Health Services shall submit an annual report to the Legislature and any other appropriate entity. The costs associated with this report shall be paid from the allocation made pursuant to subparagraph (A). The report shall describe the activities and effectiveness of the program and shall include, but not be limited to, the following types of information regarding those served by the program:

(i) The number.

(ii) The ethnic, geographic, and age breakdown.

(iii) The stages of presentation.

(iv) The diagnostic and treatment status.

(E) This program shall be conducted in consultation with the Breast Cancer Research Program created pursuant to paragraph (1).

(F) In implementing this program, the State Department of Health Services may appoint and consult with an advisory panel appointed by the State Director of Health Services and consisting of breast cancer researchers, and representatives from voluntary, nonprofit health organizations, health care professional organizations, breast cancer survivor groups, and breast cancer and health care-related advocacy groups. It is the intent of the Legislature that breast cancer-related survivors and advocates and health care advocates compose at least one-third of the advisory panel. It is also the intent of the Legislature that the State Department of Health Services collaborate closely with the panel.

(G) It is the intent of the Legislature in enacting the Breast Cancer Control Program to decrease cancer mortality rates attributable to breast cancer among uninsured and underinsured women, with special emphasis on low-income, Native American, and minority women. It is also the intent of the Legislature that the communities served by the Breast Cancer Control Program reflect the ethnic, racial, cultural, and geographic diversity of the state and that the Breast Cancer Control Program fund entities where uninsured and underinsured women are most likely to seek their health care.

(b) It is the intent of the Legislature in enacting this section that this section supersede and be operative in place of Section 30461.6 of the Revenue and Taxation Code as added by Assembly Bill 478 of the

1993–94 Regular Session.

SEC. 9. (a) The Legislature hereby requests the University of California to establish and administer the Breast Cancer Research Program, which is created by this act, as a comprehensive grant and contract program to support research efforts into the cause, cure, treatment, earlier detection, and prevention of breast cancer. It is the intent of the Legislature that this program incorporate the principles and organizational elements specified in this act, including, but not limited to, a research program office with a director and other necessary staff, a Breast Cancer Research Council, and research review panels.

(b) For the purposes of this section:

(1) "Breast cancer research" includes, but is not limited to, research in the fields of biomedical science and engineering, the social, economic and behavioral sciences, epidemiology, technology development and translation, and public health.

(2) "Council" means the Breast Cancer Research Council.

(3) "Grantee" means any qualifying public, private, or nonprofit agency or individual, including, but not limited to, colleges, universities, hospitals, laboratories, research institutions, local health departments, voluntary health agencies, health maintenance organizations, corporations, students, fellows, entrepreneurs, and individuals conducting research in California.

(4) "Program" means the Breast Cancer Research Program.

(5) "University" means the University of California.

(c) It is the intent of the Legislature that this program be administered pursuant to the following principles:

(1) The university shall work in close collaboration with the council and seek the consent of the council before taking an action different from the action recommended by the council.

(2) The council shall develop the strategic objectives and priorities of the program, actively participate in the overall management of the program, and make final recommendations on which research grants should be funded based on the research priorities established for the program and the technical merits of the proposals as determined by peer review panels.

(3) The program shall fund innovative and creative research, with a special emphasis on research that complements, rather than duplicates, the research funded by the federal government and other entities.

(4) The university and the council shall work in close collaboration with the Breast Cancer Control Program established in this act.

(5) All research funds shall be awarded on the basis of the research priorities established for the program and the scientific merit of the proposed research, as determined by an open, competitive peer review process that ensures objectivity, consistency, and high quality. All investigators, regardless of affiliation, shall have equal access and opportunity to compete for

program funds.

(6) The peer review process for the selection of research grants awarded under this program shall be generally modeled on that used by the National Institute of Health in its grantmaking process.

(7) An awardee shall be awarded grants for the full cost, both direct and indirect, of conducting the sponsored research consistent with those federal guidelines governing all federal research grants and contracts. All intellectual property assets developed under this program shall be treated in accordance with state and federal law.

(d) It is the intent of the Legislature that the university, as lead agency, do all of the following:

(1) Establish the Breast Cancer Research Council within 45 days of the enactment of this act in accordance with the following:

(A) The council shall consist of at least 13 and no more than 15 members representing a range of expertise and experience, appointed by the President of the University of California from nominations submitted by relevant organizations, as follows:

(i) Four members from breast cancer survivor and breast cancer-related advocacy groups, including, but not limited to, the California Breast Cancer Organizations (CABCO).

(ii) Four members drawn from the ranks of scientists or clinicians, including one from an independent research university in California. The scientists shall have expertise covering the various fields of scientific endeavor, including, but not limited to, the fields of biomedical research and engineering, social, economic, and behavioral research, epidemiology, and public health.

(iii) Two members from nonprofit health organizations with a commitment to breast cancer research and control.

(iv) One member who is a practicing breast cancer medical specialist.

(v) Two members from private industry with an interest in breast cancer research and control, including, but not limited to, entrepreneurs, or persons from the science or high technology industry or persons from the health care sector.

(vi) One ex officio, nonvoting member from the Breast Cancer Control Program.

(B) If the president appoints more than 13 members, it is the intent of the Legislature that the proportional representation remain substantially the same as set forth in subparagraph (A).

(C) Members shall serve without compensation, but may receive reimbursement for travel and other necessary expenses actually incurred in the performance of their official duties.

(D) Membership shall be staggered in such a way as to maintain a full council while ensuring a reasonable degree of continuity of expertise and consistency of direction.

(2) Provide overall coordination of the program.

(3) Provide staff assistance to the program and council.

(4) Develop administrative procedures relative to the solicitation, review, and awarding of grants to ensure an impartial, high quality

peer review system.

(5) Recruit and supervise research review panels. The membership of these panels shall vary depending on the subject matter of proposals and review requirements, and shall draw on the most qualified individuals. The work of the review panels shall be administered pursuant to policies and procedures established for the implementation of the program. In order to avoid conflicts of interest and to ensure access to qualified reviewers, the university may utilize reviewers not only from California but also from outside the state. When serving on review panels, institutions, corporations, or individuals who have submitted grant applications for funding by this program shall be governed by conflict-of-interest provisions consistent with the National Institute of Health Manual (Chapter 4510 (item h)), and any applicable conflict-of-interest provisions in state law.

(6) Provide for periodic program evaluation to ensure that research funded is consistent with program goals.

(7) Maintain a system of financial reporting and accountability.

(8) Provide for the systematic dissemination of research results to the public and the health care community, and provide for a mechanism to disseminate the most current research findings in the areas of cause, treatment, cure, earlier detection, and prevention of breast cancer, in order that these findings may be applied to the planning, implementation, and evaluation of the breast cancer-related programs of the State Department of Health Services, including the Breast Cancer Control Program authorized by this act.

(9) Develop policies and procedures to facilitate the translation of research results into commercial, alternate technological, and other applications wherever appropriate and consistent with state and federal law.

(10) Transmit, on or before December 31, 1994, and annually on or before each December 31 thereafter, a report to the Legislature on grants made, grants in progress, program accomplishments, and future program directions. Each report shall include, but not be limited to, the following information:

(A) The number and dollar amounts of research grants, including the amount allocated to indirect costs.

(B) The subject of research grants.

(C) The relationship between federal and state funding for breast cancer research.

(D) The relationship between each project and the overall strategy of the research program.

(E) A summary of research findings including discussion of promising new areas.

(F) The institutions and campuses receiving grant awards.

(e) It is the intent of the Legislature that no more than 5 percent of the allocation to the university be used for the purposes of administration of this program.

(f) It is the intent of the Legislature that the responsibilities of the

council shall include, but not be limited to, the following:

(1) Development and review of the strategic objectives and research priorities of the program.

(2) Delineation of resource allocation across the various priorities established for the program.

(3) Participation in periodic program and financial review, including the report transmitted pursuant to paragraph (10) of subdivision (d).

(4) Development and review of guidelines to ensure fairness, neutrality, and adherence to the principles of merit and quality in the conduct of the program.

(5) Development of appropriate linkages to nonacademic entities, including, but not limited to, voluntary organizations, health care delivery systems, industry, government agencies, research entrepreneurs, and public officials.

(6) Development and review of criteria and standards for granting awards.

(7) Oversight and review of the request for applications (RFA).

(8) Review of research review panel reports and recommendations for grant awards.

(9) Making of final recommendations on which grants are to be awarded.

(10) Development and review of oversight mechanisms for the dissemination of research results.

(11) Development and review of policies and liaison programs to facilitate the translation of research results into commercial, alternate technological, or other applications wherever appropriate.

(12) Establishment of its own internal rules of operation.

(13) Participation in the identification and recruitment of scientists with relevant expertise for possible participation in a peer review panel. The council may propose to assign a member of the council to sit as a nonvoting member of the peer review panels.

SEC. 10. The repeal by this act of Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as added by Assembly Bill 478, shall be operative only if this bill and Assembly Bill 478 are both chaptered and this bill is chaptered last.

CHAPTER 662

An act to amend Section 12285 of the Penal Code, relating to firearms.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 12285 of the Penal Code is amended to read:

12285. (a) Any person who lawfully possesses an assault weapon, as defined in Section 12276, prior to June 1, 1989, shall register the firearm by January 1, 1991, and any person who lawfully possessed an assault weapon prior to the date it was specified as an assault weapon pursuant to Section 12276.5 shall register the firearm within 90 days, with the Department of Justice pursuant to those procedures which the department may establish. The registration shall contain a description of the firearm that identifies it uniquely, including all identification marks, the full name, address, date of birth, and thumbprint of the owner, and any other information as the department may deem appropriate. The department may charge a fee for registration of up to twenty dollars ($20) per person but not to exceed the actual processing costs of the department. After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustment for the department's budget or as otherwise increased through the Budget Act.

(b) No assault weapon possessed pursuant to this section may be sold or transferred on or after January 1, 1990, to anyone within this state other than to a licensed gun dealer, as defined in subdivision (c) of Section 12290, or as provided in Section 12288. Any person who (1) obtains title to an assault weapon registered under this section by bequest or intestate succession, (2) moves into the state in lawful possession of an assault weapon, or (3) lawfully possessed a firearm subsequently declared to be an assault weapon pursuant to Section 12276.5 shall, within 90 days, either render the weapon permanently inoperable, sell the weapon to a licensed gun dealer, obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2, or remove the weapon from this state. A person who lawfully possessed a firearm which was subsequently declared to be an assault weapon pursuant to Section 12276.5 may alternatively register the firearm within 90 days of the declaration issued pursuant to subdivision (f) of Section 12276.5.

(c) A person who has registered an assault weapon under this section may possess it only under the following conditions unless a permit allowing additional uses is first obtained under Section 12286:

(1) At that person's residence, place of business, or other property owned by that person, or on property owned by another with the owner's express permission.

(2) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.

(3) While on a target range which holds a regulatory or business license for the purpose of practicing shooting at that target range.

(4) While on the premises of a shooting club which is licensed pursuant to the Fish and Game Code.

(5) While attending any exhibition, display, or educational project which is about firearms and which is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(6) While on publicly owned land if the possession and use of a firearm described in Section 12276 is specifically permitted by the managing agency of the land.

(7) While transporting the assault weapon between any of the places mentioned in this subdivision, or to any licensed gun dealer, as defined in subdivision (c) of Section 12290, for servicing or repair pursuant to subdivision (b) of Section 12290, if the assault weapon is transported as required by Section 12026.1.

(d) No person who is under the age of 18 years, no person who is prohibited from possessing a firearm by Section 12021 or 12021.1 of this code, and no person described in Section 8100 or 8103 of the Welfare and Institutions Code may register or possess an assault weapon.

(e) The department's registration procedures shall provide the option of joint registration for assault weapons owned by family members residing in the same household.

(f) For 90 days following the effective date of Senate Bill 263 of the 1991–92 Regular Session, a forgiveness period shall exist to allow persons specified in subdivision (b) of Section 12280 to register with the Department of Justice assault weapons which they lawfully possessed prior to June 1, 1989.

(g) Any person who registers his or her assault weapon during the 90-day forgiveness period described in subdivision (f), and any person whose registration form was received by the Department of Justice after January 1, 1991, and who was issued a temporary registration prior to the end of the forgiveness period, shall not be charged with a violation of subdivision (b) of Section 12280, if law enforcement becomes aware of that violation only as a result of the registration of the assault weapon. This subdivision shall have no effect upon persons charged with a violation of subdivision (b) of Section 12280 of the Penal Code prior to the effective date of this bill, provided that law enforcement was aware of the violation before the weapon was registered.

SEC. 2. Section 12285 of the Penal Code is amended to read:

12285. (a) Any person who lawfully possesses an assault weapon, as defined in Section 12276, prior to June 1, 1989, shall register the firearm by January 1, 1991, and any person who lawfully possessed an assault weapon prior to the date it was specified as an assault weapon pursuant to Section 12276.5 shall register the firearm within 90 days, with the Department of Justice pursuant to those procedures that the department may establish. The registration shall contain a description of the firearm that identifies it uniquely, including all identification marks, the full name, address, date of birth, and thumbprint of the owner, and any other information that the department may deem appropriate. The department may charge a fee for registration of up to twenty dollars ($20) per person but not to exceed the actual processing costs of the department. After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustment for the department's budget or as otherwise increased through the Budget Act.

(b) (1) Except as provided in paragraph (2), no assault weapon possessed pursuant to this section may be sold or transferred on or after January 1, 1990, to anyone within this state other than to a licensed gun dealer, as defined in subdivision (c) of Section 12290, or as provided in Section 12288. Any person who (A) obtains title to an assault weapon registered under this section by bequest or intestate succession, or (B) lawfully possessed a firearm subsequently declared to be an assault weapon pursuant to Section 12276.5, shall, within 90 days, render the weapon permanently inoperable, sell the weapon to a licensed gun dealer, obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2, or remove the weapon from this state. A person who lawfully possessed a firearm that was subsequently declared to be an assault weapon pursuant to Section 12276.5, may alternatively register the firearm within 90 days of the declaration issued pursuant to subdivision (f) of Section 12276.5.

(2) A person moving into this state, otherwise in lawful possession of an assault weapon, shall do one of the following:

(A) Prior to bringing the assault weapon into this state, that person shall first obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2.

(B) The person shall cause the assault weapon to be delivered to a licensed dealer in this state in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. If the person obtains a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2, the dealer shall redeliver that assault weapon to the person. If the licensed dealer is prohibited from delivering the assault weapon to a person pursuant to this paragraph, the dealer shall possess or

dispose of the assault weapon as allowed by this chapter.

(c) A person who has registered an assault weapon under this section may possess it only under any of the following conditions unless a permit allowing additional uses is first obtained under Section 12286:

(1) At that person's residence, place of business, or other property owned by that person, or on property owned by another with the owner's express permission.

(2) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.

(3) While on a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(4) While on the premises of a shooting club that is licensed pursuant to the Fish and Game Code.

(5) While attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by, a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(6) While on publicly owned land if the possession and use of a firearm described in Section 12276 is specifically permitted by the managing agency of the land.

(7) While transporting the assault weapon between any of the places mentioned in this subdivision, or to any licensed gun dealer, as defined in subdivision (c) of Section 12290, for servicing or repair pursuant to subdivision (b) of Section 12290, if the assault weapon is transported as required by Section 12026.1.

(d) No person who is under the age of 18 years, no person who is prohibited from possessing a firearm by Section 12021 or 12021.1 of this code, and no person described in Section 8100 or 8103 of the Welfare and Institutions Code may register or possess an assault weapon.

(e) The department's registration procedures shall provide the option of joint registration for assault weapons owned by family members residing in the same household.

(f) For 90 days following January 1, 1992, a forgiveness period shall exist to allow persons specified in subdivision (b) of Section 12280 to register with the Department of Justice assault weapons that they lawfully possessed prior to June 1, 1989.

(g) Any person who registers his or her assault weapon during the 90-day forgiveness period described in subdivision (f), and any person whose registration form was received by the Department of Justice after January 1, 1991, and who was issued a temporary registration prior to the end of the forgiveness period, shall not be charged with a violation of subdivision (b) of Section 12280, if law enforcement becomes aware of that violation only as a result of the registration of the assault weapon. This subdivision shall have no effect upon persons charged with a violation of subdivision (b) of

Section 12280 of the Penal Code prior to January 1, 1992, provided that law enforcement was aware of the violation before the weapon was registered.

SEC. 3. Section 2 of this bill incorporates amendments to Section 12285 of the Penal Code proposed by both this bill, SB 180, and SB 1128. It shall only become operative if (1) this bill and SB 180 or SB 1128, or both, are enacted and become effective on January 1, 1994, (2) each bill amends Section 12285 of the Penal Code, and (3) this bill is enacted after SB 180 and SB 1128, in which case Section 1 of this bill shall not become operative.

CHAPTER 663

An act to amend Section 26057 of the Financial Code, to amend Section 18909 of the Health and Safety Code, and to amend Sections 40507, 41730, 41731, 41732, 41734, 41750.1, 41760, 41783, 42621, 42790, 42791, 42850, 44004, 44800.5, and 45201 of, and to repeal and add Section 41825 of, the Public Resources Code, relating to solid waste.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 26057 of the Financial Code is amended to read:

26057. This division does not apply to the Department of Commerce or the California Integrated Waste Management Board.

SEC. 2. Section 18909 of the Health and Safety Code is amended to read:

18909. (a) "Building standard" means any rule, regulation, order, or other requirement, including any amendment or repeal of that requirement, which specifically regulates, requires, or forbids the method of use, properties, performance, or types of materials used in the construction, alteration, improvement, repair, or rehabilitation of a building, structure, factory-built housing, or other improvement to real property, including fixtures therein, and as determined by the commission.

(b) Except as provided in subdivision (d), "building standard" includes architectural and design functions of a building or structure, including, but not limited to, number and location of doors, windows, and other openings, stress or loading characteristics of materials, and methods of fabrication, clearances, and other functions.

(c) "Building standard" includes a regulation or rule relating to the implementation or enforcement of a building standard not otherwise governed by statute, but does not include the adoption of procedural ordinances by a city or other public agency relating to civil, administrative, or criminal procedures and remedies available

for enforcing code violations.

(d) "Building standard" does not include any safety regulations which any state agency is authorized to adopt relating to the operation of machinery and equipment used in manufacturing, processing, or fabricating, including, but not limited to, warehousing and food processing operations, but not including safety regulations relating to permanent appendages, accessories, apparatus, appliances, and equipment attached to the building as a part thereof, as determined by the commission.

(e) "Building standard" does not include temporary scaffoldings and similar temporary safety devices and procedures, which are used in the erection, demolition, moving, or alteration of buildings.

(f) "Building standard" does not include any regulation relating to the internal management of a state agency.

(g) "Building standard" does not include any regulation, rule, order, or standard which pertains to mobilehomes, manufactured homes, commercial coaches, special purpose commercial coaches, or recreational vehicles.

(h) "Building standard" does not include any regulation, rule, or order or standard which pertains to a mobilehome park, recreational vehicle park, temporary recreational vehicle park, or travel trailer park, except that "building standard" includes the construction of permanent buildings and plumbing, electrical, and fuel gas equipment and installations within permanent buildings in mobilehome parks, recreational vehicle parks, temporary recreational vehicle parks, or travel trailer parks. For purposes of this subdivision, "permanent building" means any permanent structure constructed in the mobilehome park, recreational vehicle park, temporary recreational vehicle park, or travel trailer park which is a permanent facility under the control and ownership of the park operator.

(i) "Building standard" does not include any regulation, rule, order, or standard which pertains to mausoleums regulated under Part 5 (commencing with Section 9501) of Division 8.

(j) "Building standard" does not include any regulation adopted by the California Integrated Waste Management Board, the Department of Toxic Substances Control, or the State Water Resources Control Board concerning the discharge of waste to land or the treatment, transfer, storage, resource recovery, disposal, or recycling of the waste.

SEC. 3. Section 40507 of the Public Resources Code is amended to read:

40507. The board shall file an annual report with the Legislature on or before March 31, 1992, and on or before March 31 of each year thereafter. The report shall summarize progress achieved by the board in implementing, or assisting in the implementation of, programs established pursuant to this division and shall include all of the following:

(a) A review of the board's administrative policies and

management structure to determine whether or not administrative, budgetary, or statutory changes are needed to ensure the most effective and efficient implementation of this division.

(b) A description of actions taken and progress made by the board to implement this division and to further the goals and objectives of this division as set forth in Article 1 (commencing with Section 40000) and Article 2 (commencing with Section 40050) of Chapter 1.

(c) A review of all statutory deadlines established for the board under this division and a status report on board actions taken to comply with these deadlines.

(d) A review of market development strategies undertaken by the board pursuant to this division to ensure that markets exist for materials diverted from solid waste facilities, and recommendations for administrative and legislative actions which will promote expansion of those markets. For the report due to be submitted to the Legislature on or before March 31, 1993, recommendations developed pursuant to this subdivision shall include, but not be limited to, all of the following:

(1) Recommendations for actions to develop more direct liaisons with private manufacturing industries in the state to promote increased utilization of recycled feedstock in manufacturing processes.

(2) Recommendations for actions which can be taken to assist local governments in the inclusion of recycling activities in county overall economic development plans.

(3) Recommendations for actions to utilize available financial resources for expansion of recycling industry capacity.

(4) Recommendations to improve state, local, and private industry product and material procurement practices.

(e) A review of actions taken by the board to better educate and inform individuals and public and private sector entities who generate solid waste on the importance of source reduction, recycling, and composting of solid waste, and recommendations for administrative or legislative actions which will better inform and educate these parties.

(f) (1) For the report due to be submitted to the Legislature on or before March 31, 1993, a review of actions which have been taken, or will be taken, by the board to promote source reduction as defined in Section 40196, and recommendations for legislation which will promote source reduction on a statewide basis. Recommendations for source reduction developed pursuant to this subdivision shall include, but not be limited to, all of the following:

(A) Recommendations for actions to improve packaging and product design to reduce use of excess packaging or materials.

(B) Recommendations for the development and implementation of product durability standards.

(C) Recommendations for increasing recycled feedstock use.

(D) Recommendations for reducing toxicity of packaging and

products.

(2) The board may enter into a contract with a consulting firm to prepare the recommendations required by this subdivision.

(g) A review of the effectiveness of those provisions of the Revenue and Taxation Code which provide tax credits and deductions to individuals and businesses to promote more effective implementation of this division and recommendations for improvements to those provisions which will further the implementation of this division.

(h) Beginning with the report due to be submitted to the Legislature on or before March 31, 1994, and annually thereafter, the board shall report on the effectiveness of the programs developed pursuant to Sections 40912, 40913, and 40914.

(i) Recommendations, with proposed implementing regulations, for providing technical assistance to counties and cities that meet the criteria specified in Section 41782, so that those counties and cities will be able to meet the objectives of this division. The recommendations shall, among other things, address the following matters:

(1) Assistance in developing methods of raising revenue at the local level to fund rural integrated waste management programs.

(2) Assistance in developing alternative methods of source reduction, recycling, and composting of solid waste suitable for rural local governments.

SEC. 4. Section 41730 of the Public Resources Code is amended to read:

41730. Except as provided in Section 41750.1, each city shall prepare, adopt, and , except for a city and county, transmit to the county in which the city is located a nondisposal facility element which includes all of the information required by this chapter and which is consistent with the implementation of a city source reduction and recycling element adopted pursuant to this part. The nondisposal facility element and any amendments to the element shall be appended to the city's source reduction and recycling element when that element is included in the countywide integrated waste management plan, prepared pursuant to Section 41750. The nondisposal facility element and any amendments to the element shall not be subject to the approval of the county and the majority of cities with the majority of the population in the incorporated area.

SEC. 5. Section 41731 of the Public Resources Code is amended to read:

41731. Except as provided in Section 41750.1, each county shall prepare, adopt, and , except for a city and county, transmit to the cities located in the county a nondisposal facility element which includes all of the information required by this chapter and which is consistent with the implementation of a county source reduction and recycling element adopted pursuant to this part. The nondisposal facility element and any amendments to the element shall be appended to the county's source reduction and recycling element

when that element is included in the countywide integrated waste management plan prepared pursuant to Section 41750. The nondisposal facility element and any amendments to the element shall not be subject to the approval of the majority of cities with the majority of the population in the incorporated area.

SEC. 6. Section 41732 of the Public Resources Code is amended to read:

41732. (a) City, county, and regional agency nondisposal facility elements prepared pursuant to Section 41730 , 41731, or 41750.1, as the case may be, shall include a description of any new solid waste facilities and the expansion of existing solid waste facilities that will be needed to implement the jurisdiction's source reduction and recycling element and to thereby meet the diversion requirements of Section 41780. The nondisposal facility element may include the identification of specific locations or general areas for new solid waste facilities that will be needed to implement the jursidiction's source reduction and recycling element.

(b) In complying with the requirements of subdivision (a), the jurisdiction shall utilize the pertinent information which is available to it at the time that the nondisposal facility element is prepared.

SEC. 7. Section 41734 of the Public Resources Code is amended to read:

41734. (a) (1) Prior to adopting or amending a nondisposal facility element, the city, county, or regional agency shall submit the element or amendment to the task force created pursuant to Section 40950 for review and comment.

(2) Prior to adopting or amending a regional agency nondisposal facility element, if the jurisdiction of the regional agency extends beyond the boundaries of a single county, the regional agency shall submit the element or amendment for review and comment to each task force created pursuant to Section 40950 of each county within the jurisdiction of the regional agency.

(b) Comments by the task force shall include an assessment of the regional impacts of potential diversion facilities and shall be submitted to the city , county, or regional agency and to the board within 90 days of the date of receipt of the nondisposal facility element for review and comment.

SEC. 8. Section 41750.1 of the Public Resources Code is amended to read:

41750.1. Notwithstanding the requirements of Section 41750 for the preparation and submittal of countywide integrated waste management plans, the following requirements shall apply to the submittal of integrated waste management plans where a regional agency has been formed:

(a) For a regional agency composed of jurisdictions that do not extend beyond the boundaries of a single county, the countywide integrated waste management plan shall include all of the following:

(1) The source reduction and recycling elements for the cities and the county which are member agencies of the regional agency or the

source reduction and recycling element for the regional agency.

(2) The source reduction and recycling elements for all cities which are not member agencies of the regional agency, and the source reduction and recycling element for the unincorporated area if the county is not a member agency of the regional agency.

(3) The household hazardous waste elements for the cities and the county which are member agencies of the regional agency or the household hazardous waste element for the regional agency.

(4) The household hazardous waste elements for all cities which are not a member agency of the regional agency, and the household hazardous waste element for the unincorporated area if the county is not a member agency of the regional agency.

(5) The countywide siting element.

(6) The nondisposal facility elements for the cities and the county which are member agencies of the regional agency or the nondisposal facility element for the regional agency.

(7) The nondisposal facility elements for all cities which are not member agencies of the regional agency, and the nondisposal facility element for the unincorporated area if the county is not a member agency of the regional agency.

(b) For a regional agency composed of two or more counties and all cities within those counties, an integrated waste management plan shall include all of the following:

(1) The source reduction and recycling elements for the cities and counties which are member agencies of the regional agency or the source reduction and recycling element for the regional agency.

(2) The household hazardous waste elements for the cities and counties which are member agencies of the regional agency or the household hazardous waste element for the regional agency.

(3) The countywide siting elements for the counties within the jurisdiction of the regional agency or a siting element for the regional agency.

(4) The nondisposal facility elements for the cities and counties which are member agencies of the regional agency or the nondisposal facility element for the regional agency.

(c) For a regional agency composed of more than one county, but which does not encompass all of the cities within those counties, the integrated waste management plan shall include the source reduction and recycling element and the household hazardous waste element for the regional agency.

SEC. 9. Section 41760 of the Public Resources Code is amended to read:

41760. The countywide integrated waste management plan and any amendments thereto, with the exception of any source reduction and recycling element, household hazardous waste element, or nondisposal facility element, prepared by a city or county, shall be approved by the county and by a majority of the cities within the county which contain a majority of the population of the incorporated areas of the county, except in those counties which

have only two cities, in which case the plan is subject to the approval of the city which contains a majority of the population of the incorporated areas of the county. Each city shall act upon the plan and any proposed amendment within 90 days after receipt of the amendment. If a city fails to act upon the plan or the proposed amendment within 90 days after receiving the plan or the amendment, the city shall be deemed to have approved the plan or the amendment as submitted.

SEC. 10. Section 41783 of the Public Resources Code is amended to read:

41783. For any city , county, or regional agency source reduction and recycling element submitted to the board after January 1, 1995, the 50 percent diversion requirement specified in paragraph (2) of subdivision (a) of Section 41780 may include not more than 10 percent through transformation, as defined in Section 40201, if all of the following conditions are met:

(a) The transformation project is in compliance with Sections 21151.1 and 44150 of this code and Section 42315 of the Health and Safety Code.

(b) The transformation project uses front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent feasible.

(c) The ash or other residue generated from the transformation project is routinely tested at least once a month, and, notwithstanding Section 25143.5 of the Health and Safety Code, if hazardous wastes are present, the ash or residue is sent to a class 1 hazardous waste disposal facility.

(d) The board holds a public hearing in the city , county, or regional agency jurisdiction within which a transformation project is proposed, and, after the public hearing, the board makes both of the following findings, based upon substantial evidence on the record:

(1) The city , county, or regional agency is, and will continue to be, effectively implementing all feasible source reduction, recycling, and composting measures.

(2) The transformation project will not adversely affect public health and safety or the environment.

SEC. 11. Section 41825 of the Public Resources Code, as added by Section 22 of Chapter 1095 of the Statutes of 1989, and amended by Section 12 of Chapter 1406 of the Statutes of 1990, is repealed.

SEC. 12. Section 41825 of the Public Resources Code, as added by Section 1 of Chapter 1634 of the Statutes of 1990, is repealed.

SEC. 13. Section 41825 is added to the Public Resources Code, to read:

41825. At least once every two years, the board shall review each city, county, or regional agency source reduction and recycling element and household hazardous waste element. If, after a public hearing, which, to the extent possible, is held in the local or regional agency's jurisdiction, the board finds that the city, county, or regional agency has failed to implement its source reduction and recycling

element or its household hazardous waste element, the board shall issue an order of compliance with a specific schedule for achieving compliance.

SEC. 14. Section 42621 of the Public Resources Code is amended to read:

42621. The board shall develop and implement a source reduction and recycling program for school districts which shall include, but not be limited to, all of the following elements:

(a) A survey of school districts throughout the state to determine which districts already have source reduction and recycling programs and which districts need those programs.

(b) Development of a model waste reduction and recycling program for school districts.

(c) Providing training for school districts on how to implement source reduction and recycling programs.

(d) Providing ongoing technical and informational assistance for school districts implementing source reduction and recycling programs.

(e) Establishment of a repository of literature and teaching materials from other states and institutions which have instituted source reduction and recycling programs for their waste stream.

(f) Determining the types of equipment needed by school districts to implement source reduction recycling programs.

(g) Providing assistance to school districts in locating markets for their reusable or recyclable materials.

(h) Disseminating information to school districts on office equipment and other items which are made from recycled materials and which are available for purchase by school districts.

SEC. 15. Section 42790 of the Public Resources Code is amended to read:

42790. Any person who violates Article 3 (commencing with Section 42770) is guilty of an infraction punishable by a fine of not more than one thousand dollars ($1,000).

SEC. 16. Section 42791 of the Public Resources Code is amended to read:

42791. In addition to Section 42790, any person who violates Article 3 (commencing with Section 42770) may be assessed a civil penalty by the board of not more than one thousand dollars ($1,000) for each violation, pursuant to notice and hearing. Any civil penalties received pursuant to this subdivision shall be deposited in a separate account in the fund and, upon appropriation by the Legislature, shall be used by the board for the administration of this division.

SEC. 17. Section 42850 of the Public Resources Code is amended to read:

42850. (a) Any person who intentionally or negligently violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, is liable for a civil penalty not to exceed ten thousand dollars ($10,000) for each violation of a separate provision or, for continuing

violations, for each day that the violation continues.

(b) Liability under this section may be imposed in a civil action or liability may be imposed administratively pursuant to this article.

SEC. 18. Section 44004 of the Public Resources Code is amended to read:

44004. (a) No operator of a solid waste facility shall make a significant change in the design or operation of any solid waste facility except in conformance with the terms and conditions in an approved solid waste facilities permit or revised solid waste facilities permit issued by the local enforcement agency, or by the board acting as the enforcement agency, to the operator.

(b) If the operator wishes to modify the design or operation of a solid waste facility, the operator shall file an application for revision of the existing solid waste facilities permit with the enforcement agency. The application shall be filed at least 120 days in advance of the date when the proposed modification is to take place.

(c) Under circumstances which present an immediate danger to the public health and safety or to the environment, as determined by the enforcement agency, the 120-day filing period may be waived.

SEC. 19. Section 44800.5 of the Public Resources Code is amended to read:

44800.5. When the board acts as the enforcement agency, all hearings required to be conducted shall be conducted by a hearing panel of three persons appointed by the chairperson of the board.

SEC. 20. Section 45201 of the Public Resources Code is amended to read:

45201. Any attorney authorized to act on behalf of the board may petition the superior court to impose, assess, and recover the civil penalties authorized by Section 45200. Any penalties recovered pursuant to this section shall be paid to the board or to the local enforcement agency, whichever is represented by the attorney bringing the action. Any penalties paid to the local enforcement agency shall be deposited into a trust account to be used exclusively to pay the costs of supporting the local enforcement agency in carrying out its responsibilities under this division and any penalties paid to the board shall be deposited in the fund.

CHAPTER 664

An act to amend Section 8214.3 of, and to add Section 8214.15 to, the Government Code, relating to notaries public.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 8214.15 is added to the Government Code, to read:

8214.15. (a) In addition to any licensing or disciplinary sanction, a violation of subdivision (f), (i), (*l*), or (m) of Section 8214.1, or a willful violation of subdivision (d) of Section 8214.1, is punishable by a civil penalty not to exceed one thousand five hundred dollars ($1,500).

(b) In addition to any licensing or disciplinary sanction, a violation of subdivision (h), (j), or (k) of Section 8214.1, or a negligent violation of subdivision (d) of Section 8214.1, is punishable by a civil penalty not to exceed seven hundred fifty dollars ($750).

(c) The civil penalty may be imposed by the Secretary of State if a hearing is not requested pursuant to Section 8214.3. If a hearing is requested, the hearing officer shall make the determination.

(d) Any civil penalties collected pursuant to this section shall be transferred to the General Fund. It is the intent of the Legislature that to the extent General Fund moneys are raised by penalties collected pursuant to this section, that money should be made available to the Secretary of State's office to defray its costs of investigating and pursuing licensing and monetary remedies for violations of the notary public law.

SEC. 2. Section 8214.3 of the Government Code is amended to read:

8214.3. Prior to a revocation or suspension pursuant to this chapter or after a denial of a commission, or prior to the imposition of a civil penalty, the person affected shall have a right to a hearing on the matter and the proceeding shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3, except that a person shall not have a right to a hearing after a denial of an application for a notary public commission in either of the following cases:

(a) The Secretary of State has, within one year previous to the application, and after proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3, denied or revoked the applicant's application or commission.

(b) The Secretary of State has entered an order pursuant to Section 8214.4 finding that the applicant has committed or omitted acts constituting grounds for suspension or revocation of a notary public's commission.

CHAPTER 665

An act to amend Section 43200 of the Public Resources Code, relating to solid waste.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 43200 of the Public Resources Code is amended to read:

43200. (a) The board shall prepare and adopt certification regulations for local enforcement agencies. The regulations shall specify requirements that a local agency shall meet before being designated as an enforcement agency. The regulations shall include, but are not limited to, all of the following:

(1) Technical expertise.

(2) (A) Adequacy of staff resources.

(B) For the purposes of this paragraph, the board shall adopt regulations for specified enforcement agencies, as defined in subparagraph (C), which meet all of the following requirements:

(i) The regulations shall not require a specific number of person-hours or staff resources for the performance of duties as a specified enforcement agency.

(ii) The regulations shall establish performance standards for specified enforcement agencies which will provide a comparable level of public health and safety and environmental protection to that required of other local agencies certified pursuant to this article.

(iii) The regulations shall establish procedures to ensure that all duties required of specified enforcement agencies pursuant to this article are actually performed.

(iv) The regulations shall require specified enforcement agency personnel to receive a comparable level of training to that required of personnel employed by other local agencies certified pursuant to this article.

(C) For the purposes of subparagraph (B), "specified enforcement agency" means a local enforcement agency which has a population of less than 50,000 persons.

(3) Adequacy of budget resources.

(4) Training requirements.

(5) The existence of at least one permitted solid waste facility within the jurisdiction of the local agency. For the purposes of this paragraph, "permitted solid waste facility" includes a proposed solid waste facility for which an environmental impact report or negative declaration has been prepared and certified pursuant to Division 13 (commencing with Section 21000) or for which a conditional use permit has been issued by a city or county.

(b) The regulations adopted pursuant to subdivision (a) shall

specify four separate types of certifications for which an enforcement agency may be designated, as follows:

(1) Permitting, inspection, and enforcement of regulations at solid waste landfills.

(2) Permitting, inspection, and enforcement of solid waste incinerators.

(3) Permitting, inspection, and enforcement of transfer and processing stations.

(4) Inspection and enforcement of litter, odor, and nuisance regulations at solid waste landfills.

CHAPTER 666

An act to amend Sections 798.3, 798.15, 798.22, and 798.55 of the Civil Code, relating to mobilehome parks.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 798.3 of the Civil Code is amended to read:

798.3. (a) "Mobilehome" is a structure designed for human habitation and for being moved on a street or highway under permit pursuant to Section 35790 of the Vehicle Code. Mobilehome includes a manufactured home, as defined in Section 18007 of the Health and Safety Code, and a mobilehome, as defined in Section 18008 of the Health and Safety Code, but, except as provided in subdivision (b), does not include a recreational vehicle, as defined in Section 799.29 of this code and Section 18010 of the Health and Safety Code or a commercial coach as defined in Section 18001.8 of the Health and Safety Code.

(b) "Mobilehome," for purposes of this chapter, other than Section 798.73, also includes trailers and other recreational vehicles of all types defined in Section 18010 of the Health and Safety Code, other than motor homes, truck campers, and camping trailers, which are used for human habitation if the occupancy criteria of either paragraph (1) or (2), as follows, are met:

(1) The trailer or other recreational vehicle occupies a mobilehome site in the park, on November 15, 1992, under a rental agreement with a term of one month or longer, and the trailer or other recreational vehicle occupied a mobilehome site in the park prior to January 1, 1991.

(2) The trailer or other recreational vehicle occupies a mobilehome site in the park for nine or more continuous months commencing on or after November 15, 1992.

"Mobilehome" does not include a trailer or other recreational vehicle located in a recreational vehicle park subject to Chapter 2.6

(commencing with Section 799.20), except as otherwise provided in subdivision (b) of Section 799.45.

SEC. 2. Section 798.15 of the Civil Code is amended to read:

798.15. The rental agreement shall be in writing and shall contain, in addition to the provisions otherwise required by law to be included, all of the following:

(a) The term of the tenancy and the rent therefor.

(b) The rules and regulations of the park.

(c) A copy of the text of this chapter shall be attached as an exhibit and shall be incorporated into the rental agreement by reference. Management shall provide all homeowners with a copy of this chapter prior to February 1 of each year, if a significant change was made in the chapter by legislation enacted in the prior year.

(d) A provision specifying that (1) it is the responsibility of the management to provide and maintain physical improvements in the common facilities in good working order and condition and (2) with respect to a sudden or unforeseeable breakdown or deterioration of these improvements, the management shall have a reasonable period of time to repair the sudden or unforeseeable breakdown or deterioration and bring the improvements into good working order and condition after management knows or should have known of the breakdown or deterioration. For purposes of this subdivision, a reasonable period of time to repair a sudden or unforeseeable breakdown or deterioration shall be as soon as possible in situations affecting a health or safety condition, and shall not exceed 30 days in any other case except where exigent circumstances justify a delay.

(e) A description of the physical improvements to be provided the homeowner during his or her tenancy.

(f) A provision listing those services which will be provided at the time the rental agreement is executed and will continue to be offered for the term of tenancy and the fees, if any, to be charged for those services.

(g) A provision stating that management may charge a reasonable fee for services relating to the maintenance of the land and premises upon which a mobilehome is situated in the event the homeowner fails to maintain the land or premises in accordance with the rules and regulations of the park after written notification to the homeowner and the failure of the homeowner to comply within 14 days. The written notice shall state the specific condition to be corrected and an estimate of the charges to be imposed by management if the services are performed by management or its agent.

(h) All other provisions governing the tenancy.

SEC. 3. Section 798.22 of the Civil Code is amended to read:

798.22. (a) In any new mobilehome park that is developed after January 1, 1982, mobilehome spaces shall not be rented for the accommodation of recreational vehicles as defined by Section 799.29 unless the mobilehome park has a specifically designated area within the park for recreational vehicles, which is separate and apart from

the area designated for mobilehomes. Recreational vehicles may be located only in the specifically designated area.

(b) Any new mobilehome park that is developed after January 1, 1982, is not subject to the provisions of this section until 75 percent of the spaces have been rented for the first time.

SEC. 4. Section 798.55 of the Civil Code is amended to read:

798.55. (a) The Legislature finds and declares that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter.

(b) The management shall not terminate or refuse to renew a tenancy, except for a reason specified in this article and upon the giving of written notice to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure, to remove the mobilehome from the park within a period of not less than 60 days, which period shall be specified in the notice. A copy of this notice shall be sent to the legal owner, as defined in Section 18005.8 of the Health and Safety Code, each junior lienholder, as defined in Section 18005.3 of the Health and Safety Code, and the registered owner of the mobilehome, if other than the homeowner, by United States mail within 10 days after notice to the homeowner. The copy may be sent by regular mail or by certified or registered mail with return receipt requested, at the option of the management. If the homeowner has not paid the rent due within three days after notice to the homeowner, and if the first notice was not sent by certified or registered mail with return receipt requested, a copy of the notice shall again be sent to the legal owner, each junior lienholder, and the registered owner, if other than the homeowner, by certified or registered mail with return receipt requested within 10 days after notice to the homeowner. Copies of the notice shall be addressed to the legal owner, each junior lienholder, and the registered owner at their addresses, as set forth in the registration card specified in Section 18091.5 of the Health and Safety Code.

CHAPTER 667

An act to amend Sections 1580 and 1584 of the Fish and Game Code, relating to ecological reserves.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1580 of the Fish and Game Code is amended to read:

1580. The Legislature hereby declares that the policy of the state is to protect threatened or endangered native plants, wildlife, or aquatic organisms or specialized habitat types, both terrestrial and aquatic, or large heterogeneous natural marine gene pools for the future use of mankind through the establishment of ecological reserves. For the purpose of establishing those ecological reserves, the department, with the approval of the commission, may obtain, accept on behalf of the state, acquire, or control, by purchase, lease, easement, gift, rental, memorandum of understanding, or otherwise, and occupy, develop, maintain, use, and administer land, or land and water, or land and water rights, suitable for the purpose of establishing ecological reserves. Any property obtained, accepted, acquired, or controlled by the department pursuant to this article may be designated by the commission as an ecological reserve. The commission may adopt regulations for the occupation, utilization, operation, protection, enhancement, maintenance, and administration of ecological reserves. The ecological reserves shall not be classified as wildlife management areas pursuant to Section 1504 and shall be exempt from Section 1504.

SEC. 2. Section 1584 of the Fish and Game Code is amended to read:

1584. As used in this article, "ecological reserve" means land or land and water areas that are designated as an ecological reserve by the commission pursuant to Section 1580 and that are to be preserved in a natural condition, or which are to be provided some level of protection as determined by the commission, for the benefit of the general public to observe native flora and fauna and for scientific study or research.

CHAPTER 668

An act to add Sections 39360.2, 39360.6, and 42133.5 to the Education Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 39360.2 is added to the Education Code, to read:

39360.2. Notwithstanding any other provision of this part, in connection with a sale, sale back, lease, or leaseback of school district property, no proceeds obtained by the school district from the sale of the sale back or leaseback agreement, or interests therein, or a debt instrument payable from payments under the sale back or leaseback agreement shall be used for general operating purposes of the school district.

SEC. 2. Section 39360.6 is added to the Education Code, to read:

39360.6. (a) Notwithstanding subdivision (c) of this section or Sections 39360.1, 39360.2, and 42133, the West Contra Costa Unified School District, formerly known as the Richmond Unified School District, may enter into an agreement to lease any real property pursuant to Section 39360.1 and may use the financing proceeds from the agreement to terminate the Lease-Purchase Agreement, dated May 1, 1988, between the Richmond Unified School District Financing Corporation and the Richmond Unified School District. However, any property that has been leased, rented, sold, or otherwise utilized pursuant to Section 41470 may not be leased pursuant to this section.

(b) The West Contra Costa Unified School District shall notify the Controller at the time the district enters into a lease agreement pursuant to subdivision (a). That notice shall set forth a schedule of the rental payments payable under the lease agreement and shall include the name and address of the trustee to whom the right to receive the rental payments has been assigned.

(c) Upon written notification by the trustee that the school district has not made one or more of the rental payments required by the terms of the lease, the Controller shall pay to the trustee from Section A of the State School Fund the defaulted rental payment. That payment by the Controller shall not exceed the amount of any apportionment entitlement of the district to moneys in Section A of the State School Fund, less any payments required in that fiscal year to repay any state loans made to the district. The Controller shall withhold the amount of any payment made under this subdivision, including reimbursement of the Controller's administrative costs as determined under a schedule approved by the California Debt

Advisory Commission, from subsequent apportionments to the West Contra Costa Unified School District from Section A of the State School Fund.

(d) Nothing in this section shall be construed to obligate the state to make any payment to, or on behalf of, the West Contra Costa Unified School District from Section A of the State School Fund in any amount, pursuant to any particular allocation formula, or to make any other payment to, or on behalf of, the district, including, but not limited to, any payment of those rental payments.

(e) Any apportionments made by the Controller pursuant to subdivision (c) shall be deemed to be an allocation to the West Contra Costa Unified School District for purposes of subdivision (b) of Section 8 of Article XVI of the California Constitution, and for purposes of Chapter 2 (commencing with Section 41200) of Part 24.

SEC. 3. Section 42133.5 is added to the Education Code, to read:

42133.5. Regardless of the certification of the budgetary status of a school district or county office of education under subdivision (j) of Section 1240 or Section 42131, no proceeds obtained by a school district from the sale of a sale back or leaseback agreement, or interests therein, or a debt instrument payable from payments under a sale back or leaseback agreement shall be used for general operating purposes of the school district.

SEC. 4. Due to unique circumstance concerning the West Contra Costa Unified School District and the Contra Costa County Office of Education, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to authorize school districts to enter into property transactions at the earliest possible time and to thereby provide urgently needed financing, it is necessary that the provisions of this act take effect immediately.

CHAPTER 669

An act to amend Sections 1909, 41841.5, 52500.1, 52523, 52616.4, 52616.16, and 52616.17 of the Education Code, and to amend Section 14 of Chapter 1195 of the Statutes of 1992, relating to adult education.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1909 of the Education Code is amended to read:

1909. (a) From funds appropriated for allocation pursuant to Sections 2558 and 41841.5, for each county superintendent of schools who maintained schools or classes for adults in correctional facilities in the 1981–82 fiscal year pursuant to Section 1906, and who continues to maintain those schools or classes in each fiscal year thereafter, the Superintendent of Public Instruction shall allow in the 1982–83 fiscal year and each fiscal year thereafter an amount equal to the actual current expenses of the programs, but not to exceed an amount determined as follows:

(1) Compute the prior year statewide average revenue limit per unit of average daily attendance for adults, increased by the amount specified in Section 52616.16 for the current fiscal year.

(2) Multiply the amount computed in paragraph (1) by the average daily attendance of the schools or classes in the current fiscal year.

(3) Multiply the product determined in paragraph (1) for each fiscal year by 0.8.

(b) Notwithstanding subdivision (a), for the 1993–94 and 1994–95 fiscal years, in no event shall the amount allowed to a county superintendent of schools who maintains schools or classes for adults in correctional facilities for each unit of average daily attendance exceed the statewide average revenue limit at which adults in correctional facilities were funded in the 1992–93 fiscal year, as adjusted by any cost-of-living adjustment pursuant to Section 42238.1.

SEC. 2. Section 41841.5 of the Education Code is amended to read:

41841.5. (a) The Superintendent of Public Instruction shall allow to each school district maintaining a secondary school or county superintendent of schools, as the case may be, an amount equal to the actual current expense of the district of maintaining adult education classes for prisoners in correctional facilities for the current fiscal year. The amount so allowed to a district or county superintendent of schools for each unit of average daily attendance in these classes shall in no event exceed the statewide average revenue limit for adults multiplied by 0.8. However, for the 1993–94 and 1994–95 fiscal years, the amount so allowed to a district or county superintendent of schools for each unit of average daily attendance in the classes shall in no event exceed the statewide average revenue limit at which adults in correctional facilities were funded in the 1992–93 fiscal year, as adjusted by any cost-of-living adjustment pursuant to Section 42238.1.

For the purposes of this section, "correctional facilities" includes any county jail, county industrial farm, or county or joint county road camp.

Each school district or county superintendent of schools shall

receive advanced apportionments as authorized by Sections 41330, 41332, and 41335 on the basis of the cost data report of the district for the preceding fiscal year and each district or county superintendent of schools shall file a preliminary cost data report based upon estimated current expenses.

For purposes of this section, the Superintendent of Public Instruction shall, by rules and regulations, establish minimum standards for the conduct of the adult education classes, including, but not necessarily limited to, attendance requirements and requirements concerning records to be kept and reports to be submitted.

(b) There is hereby appropriated from the General Fund to Section A of the State School Fund the following sums for the following fiscal years for the purposes of subdivision (a):

(1) For the 1980–81 fiscal year	$1,020,100
(2) For the 1981–82 fiscal year and each fiscal year thereafter	$1,113,000

Commencing with the 1982–83 fiscal year, the amounts in paragraph (2) shall be cumulatively increased by 6 percent, unless otherwise provided by law. Commencing with the 1990–91 fiscal year, the amounts in paragraph (2) shall be increased by the percentage change determined pursuant to subdivision (b) of Section 42238.1.

SEC. 3. Section 52500.1 of the Education Code is amended to read:

52500.1. Eligibility of high school pupils for enrollment in adult education programs, courses, and classes shall be limited to pupils who meet all of the following conditions:

(a) High school pupils who enroll in adult education programs, courses, and classes pursuant to Section 41976, except that high school pupils shall not be counted for adult education apportionment purposes if those pupils are enrolled in programs, courses, or classes pursuant to paragraph (5), (7), (8), (9), or (10) of subdivision (a) of Section 41976.

(b) High school pupils who have completed a counseling session that involved the pupil, a certificated representative of the high school, and the pupil's parent or guardian, and who have a school record that contains written documentation of the session and a statement that the pupil is voluntarily enrolling in the adult education course or class, and that enrollment in an adult education program, course, or class will enhance the pupil's progress toward meeting the educational requirements for graduation from high school.

SEC. 4. Section 52523 of the Education Code is amended to read:

52523. Adult education programs, courses, and classes shall not be used to supplant the regular high school curriculum for high school pupils enrolled in adult education. Adult education shall supplement

and enrich the high school pupil's educational experiences. Therefore, adult education shall, at a minimum, meet the following criteria:

(a) All programs, courses, and classes conducted as adult education shall be open to adults and listed in the district's catalog of adult education classes provided to the public and shall be under the supervision and jurisdiction of the adult education administrator as determined by the school district governing board. Adults shall have priority over other students for admission to any adult education class, provided that those adults enroll not later than the regular enrollment period for those classes. The enrollment period shall be published in the course catalog. No course required by the school district for high school graduation or necessary for pupils to maintain satisfactory academic progress shall be offered exclusively through the adult education program. An adult for purposes of this section is a person 18 years of age or older or other person who is not concurrently enrolled in a regular high school program.

(b) Each adult education teacher, whether part time or full time, under contract status or in an hourly position, shall be part of the adult school faculty and shall be under the direct supervision of the authorized adult education administrator.

(c) Enrollment of high school pupils shall be voluntary on the part of the pupil taking the class. Prior to enrollment by a high school pupil in an adult education program, class, or course, the pupil shall have documentation of the counseling session held pursuant to subdivision (b) of Section 52500.1.

(d) Enrollment of a high school pupil in an adult education program, course, or class shall be for sound educational purposes, including, but not limited to, the following:

(1) The adult education program, course, or class is not offered in the regular high school curriculum.

(2) The adult education program, course, or class is needed by the pupil to make up deficient credits for graduation from high school.

(3) The adult education program, course, or class allows the pupil to gain vocational and technical skills, provided the regular high school does not offer a program of vocational and technical education.

(4) The adult education program, course, or class, supplements and enriches the high school pupil's educational experience.

(e) A high school pupil shall not be enrolled for apportionment purposes in an adult education program, course, or class that would be considered any of the following:

(1) Physical education.

(2) Driver's training and education.

(3) Vocal and instrumental music.

(4) Band.

(5) Drama.

(6) Preparation of a school yearbook or school newspaper.

(7) Training for, or participation in, athletic camps, cheerleading

or spirit organizations, student government, or extracurricular student clubs.

The Superintendent of Public Instruction shall, on or before July 1, 1993, issue a program advisory that further defines the purposes set forth in subdivision (d) and the courses set forth in subdivision (e). The superintendent is authorized to issue, at any time, rules and regulations instead of the program advisory.

SEC. 5. Section 52616.4 of the Education Code is amended to read:

52616.4. (a) A school district may expend funds from the district's Adult Education Fund only for the following charges:

(1) Direct instructional costs relating directly to the adult education program, including, but not limited to, the salaries and benefits of adult education teachers and aides, textbooks, instructional supplies, travel and conference expenses for employees who work in the adult education program, and repair, maintenance, acquisition, and replacement of instructional equipment used in the adult education program.

(2) Direct support costs for the adult education program. For the purposes of this section "direct support costs" means:

(A) Instructional administration and instructional media costs that are supported by auditable documentation. For purposes of this provision, instructional administration costs include the documented costs of the individual who, regardless of specific job title, administers the district's adult education program.

(B) School administration and pupil services costs that are supported by auditable documentation and that represent the activities of individuals whose employment by the school district is exclusively in support of the adult education program.

(C) Plant maintenance and operations costs, including costs for facilities that are used to provide child care services to the children of the students attending the adult education program at a particular site as follows:

(i) For facilities that exclusively house adult education programs, the costs that are supported by auditable documentation. For purposes of this subparagraph, a facility that houses an adult education program and a regional occupational center or program or a child care program, or both, is a facility that exclusively houses an adult education program.

(ii) For facilities that are used by more than one program, including the adult education program, a district may charge the adult education fund for an amount attributable to the adult education program, but this charge shall not exceed the amount derived from the following calculation:

(I) Calculate, according to the general description in the California School Accounting Manual, the prorated number of classroom units that the adult education program uses for instructional and child care purposes.

(II) Calculate the total number of classroom units in the district.

(III) Divide the amount calculated in (I) by the amount calculated in (II).

(IV) Multiply the quotient calculated in (III) by the district's total plant maintenance and operations costs.

(D) Facilities costs for nondistrict-owned facilities that exclusively house adult education programs, including, but not limited to, costs of facilities that are used to provide child care services to the children of the pupils attending the adult education program at the same site. For purposes of this paragraph, a facility that houses an adult education program and a regional occupational center or program or a child care program, or both, is a facility that exclusively houses an adult education program.

(E) Facilities costs for the acquisition of facilities originally acquired by adult education programs, or for the restoration of those facilities, including costs for debt service for the acquisition or restoration of a facility, including the costs of facilities that are used to provide child care services to the children of the pupils attending the adult education program at the same site.

For the purposes of this paragraph "auditable documentation" means time reports and other contemporaneous records that establish the time that individual employees spend working for the adult education program, and the documentation that supports nonpersonnel costs substantiating that the adult education program received the service, supply, or equipment. That documentation shall comply with the documentation requirements set forth in the California School Accounting Manual published pursuant to Section 41010.

(3) Indirect costs of the adult education program. For the purposes of this paragraph, "indirect costs" means the lesser of the school district's prior year indirect cost rate as approved by the State Department of Education or the statewide average indirect cost rate for the second prior fiscal year.

(4) As an alternative to charging the costs in both paragraphs (2) and (3) to the adult education program, a school district may transfer not more than 8 percent of the annual revenue deposited in the district's Adult Education Fund to the district's general fund for expenditures the district incurs in operating its adult education program.

(b) If the State Department of Education and the Department of Finance concur that a school district has violated this section, the Superintendent of Public Instruction shall direct that school district to transfer double the amount improperly transferred to the district's general fund from that fund to the district's Adult Education Fund for the subsequent fiscal year, which amount shall be used for the improvement of the district's adult education program. If the school district fails to make that transfer as directed, the superintendent shall reduce the school district's regular apportionment determined pursuant to Section 42238 and increase the district's adult block entitlement determined pursuant to Section 52616 by that amount,

which amount shall be used for improvement of the district's adult education program.

(c) It is the intent of the Legislature in enacting this section that responsible school district officials be held fully accountable for the accounting and reporting of adult education programs and that minor and inadvertent instances of noncompliance be resolved in a fair and equitable manner to the satisfaction of the Superintendent of Public Instruction and the Department of Finance.

(d) The Superintendent of Public Instruction, with the approval of the Department of Finance, may waive up to the full transfer amount in subdivision (b) if he or she determines that the noncompliance involved is minor or inadvertent, or both.

SEC. 6. Section 52616.16 of the Education Code is amended to read:

52616.16. (a) For the 1993–94 fiscal year, each school district's adult education revenue limit per unit of average daily attendance shall be determined as follows:

(1) (A) Add the total apportionment the school district received for the 1991–92 fiscal year for its adult education program and the portion of its state apportionment that represents the funding for those secondary school pupils concurrently enrolled in adult education.

(B) Add the school district's average daily attendance funded for the annual apportionment for the 1991–92 fiscal year for adult education and the portion of the district's funded regular average daily attendance for secondary school pupils concurrently enrolled in adult education.

(C) Divide subparagraph (A) by subparagraph (B) to determine the school district's adult education revenue limit per unit of average daily attendance.

(2) (A) For a school district offering adult education courses and classes pursuant to Section 41976.2, multiply the funded average daily attendance for the second principal apportionment made in the 1991–92 fiscal year for independent study pupils 21 years of age or older and pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday, as calculated pursuant to Section 46300.1, as that section read on January 1, 1992, by the statewide average funded adult education revenue limit for the 1992–93 fiscal year. This amount shall be added to the amount calculated pursuant to subparagraph (A) of paragraph (1) of this subdivision.

(B) Determine the funded average daily attendance made in the second principal apportionment for the 1991–92 fiscal year for independent study pupils 21 years of age or older and pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday, as calculated pursuant to Section 46300.1, as that section read on January 1, 1992. This amount shall be added to the amount calculated pursuant to subparagraph (B) of paragraph (1) of this

subdivision.

(3) If the amount determined in paragraph (1) is between one thousand seven hundred seventy-five dollars ($1,775) and two thousand fifty dollars ($2,050), that amount shall be the district's adult education revenue limit per unit of average daily attendance for the 1993–94 fiscal year.

(4) If the amount determined in paragraph (1) is greater than two thousand fifty dollars ($2,050), the difference between that amount and two thousand fifty dollars ($2,050) shall be multiplied by 0.67 and that product shall be added to two thousand fifty dollars ($2,050). That amount shall be the district's adult education revenue limit per unit of average daily attendance for the 1993–94 fiscal year.

(5) If the amount determined in paragraph (1) is less than one thousand seven hundred seventy-five dollars ($1,775), the difference between that amount and one thousand seven hundred seventy-five dollars ($1,775) shall be multiplied by 0.5 and that product shall be subtracted from one thousand seven hundred seventy-five dollars ($1,775). That amount shall be the district's adult education revenue limit per unit of average daily attendance for the 1993–94 fiscal year.

(6) Any school district that establishes a new adult education program and receives a state apportionment for adult education on or after July 1, 1993, shall have an adult education revenue limit per unit of average daily attendance of one thousand seven hundred seventy-five dollars ($1,775) for the 1993–94 fiscal year.

(b) For the 1994–95 fiscal year, each school district's adult education revenue limit per unit of average daily attendance shall be determined as follows:

(1) (A) Add the total apportionment the school district received for the 1991–92 fiscal year for its adult education program and the portion of its state apportionment that represents the funding for those secondary school pupils concurrently enrolled in adult education.

(B) Add the school district's average daily attendance funded for the annual apportionment for the 1991–92 fiscal year for adult education and the portion of the district's funded regular average daily attendance for secondary school pupils concurrently enrolled in adult education.

(C) Divide subparagraph (A) by subparagraph (B) to determine the school district's adult education revenue limit per unit of average daily attendance.

(2) (A) For a school district offering adult education courses and classes pursuant to Section 41976.2, multiply the funded average daily attendance for the second principal apportionment made in the 1991–92 fiscal year for independent study pupils 21 years of age or older and pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday, as calculated pursuant to Section 46300.1, as that section read on January 1, 1992, by the statewide average funded adult education revenue limit for the 1992–93 fiscal

year. This amount shall be added to the amount calculated pursuant to subparagraph (A) of paragraph (1) of this subdivision.

(B) Determine the funded average daily attendance for the second principal apportionment made in the 1991–92 fiscal year for independent study pupils 21 years of age or older and pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday, as calculated pursuant to Section 46300.1, as that section read on January 1, 1992. This amount shall be added to the amount calculated pursuant to subparagraph (B) of paragraph (1) of this subdivision.

(3) If the amount determined in paragraph (1) is between one thousand seven hundred seventy-five dollars ($1,775) and two thousand fifty dollars ($2,050), that amount shall be the district's adult education revenue limit per unit of average daily attendance for the 1994–95 fiscal year.

(4) If the amount determined in paragraph (1) is greater than two thousand fifty dollars ($2,050), the difference between that amount and two thousand fifty dollars ($2,050) shall be multiplied by 0.33 and that product shall be added to two thousand fifty dollars ($2,050). That amount shall be the district's adult education revenue limit per unit of average daily attendance for the 1994–95 fiscal year.

(5) If the amount determined in paragraph (1) is less than one thousand seven hundred seventy-five dollars ($1,775), the amount of one thousand seven hundred seventy-five dollars ($1,775) shall be the district's adult education revenue limit per unit of average daily attendance for the 1994–95 fiscal year.

(6) Any school district that establishes a new adult education program and receives a state apportionment for adult education on or after July 1, 1993, shall have an adult education revenue limit per unit of average daily attendance of one thousand seven hundred seventy-five dollars ($1,775) for the 1994–95 fiscal year.

(c) For the 1995–96 fiscal year the adult education revenue limit per unit of average daily attendance shall be one of the following:

(1) The amount determined in paragraph (1) of subdivision (a).

(2) Two thousand fifty dollars ($2,050) for any district that had a 1993–94 fiscal year adult education revenue limit per unit of average daily attendance determined pursuant to paragraph (4) of subdivision (a).

(3) One thousand seven hundred seventy-five dollars ($1,775) for any district that had a 1993–94 fiscal year adult education revenue limit per unit of average daily attendance determined pursuant to paragraph (5) or paragraph (6) of subdivision (a).

(d) Commencing July 1, 1996, an inflation adjustment shall be calculated for each district so that over time the adult education revenue limit per unit of average daily attendance shall be the same for all districts. A school district's adult education revenue limit per unit of average daily attendance shall be the district's prior fiscal year's adult education revenue limit per unit of average daily

attendance increased by a dollar amount calculated as follows:

(1) Determine the dollar amount by multiplying the statewide average funded adult education revenue limit per unit of average daily attendance for the prior fiscal year by the inflation adjustment used to increase revenue limits for unified school districts pursuant to Section 42238.1.

(2) Determine a factor as follows:

(A) Multiply the highest funded adult education revenue limit per unit of average daily attendance in the state for the prior fiscal year by 1.02.

(B) Divide the amount determined in subparagraph (A) by the funded adult education revenue limit per unit of average daily attendance of the school district for the prior fiscal year.

(C) If the number determined in subparagraph (B) is greater than 1.10, that result shall be reduced to 1.10. If the number determined in subparagraph (B) is less than 1.02, that result shall be increased to 1.02.

(D) Subtract 1.0 from the number determined in subparagraph (C).

(E) Divide the number determined in subparagraph (D) by the inflation adjustment used to increase revenue limits for a unified school district pursuant to Section 42238.1.

(3) Multiply the dollar amount determined in paragraph (1) by the factor determined in paragraph (2).

(4) Add the amount determined in paragraph (3) to the funded adult revenue limit per unit of average daily attendance of the school district for the prior fiscal year. In no case shall any revenue limit per unit of average daily attendance be increased above the amount calculated in subparagraph (A) of paragraph (2).

The Superintendent of Public Instruction shall reallocate any amounts calculated for a district in excess of the amount calculated in subparagraph (A) of paragraph (2) to augment the inflation adjustments of other districts.

If the amount of funds needed to provide inflation adjustments calculated pursuant to this subdivision exceeds the amount appropriated in the annual Budget Act for adult education program inflation adjustments, the superintendent shall prorate the amounts calculated pursuant to this subdivision.

(e) When each district's adult education revenue per unit of average daily attendance is the same, each district, notwithstanding paragraphs (1) and (2) of subdivision (d), shall receive the same inflation adjustment calculated pursuant to the inflation adjustment used to increase revenue limits for unified school districts pursuant to Section 42238.1.

(f) If there is an average daily attendance audit adjustment for any of the 1990–91, 1991–92, or 1992–93 fiscal years, for purposes of calculating the district's adjusted adult education revenue limit pursuant to this section, the Superintendent of Public Instruction, with the approval of the Department of Finance, may waive the

average daily attendance audit adjustment if the superintendent determines that the audit exception was minor or inadvertent, or both.

SEC. 7. Section 52616.17 of the Education Code is amended to read:

52616.17. Commencing July 1, 1993, the Superintendent of Public Instruction shall determine an authorized limit of adult education average daily attendance for all high school districts and unified school districts that operated and claimed adult education state apportionment for the 1992–93 fiscal year, as follows:

(a) For the 1993–94 fiscal year, the district's authorized adult education average daily attendance shall be one of the following:

(1) The district's adult education average daily attendance added to the district's average daily attendance for concurrently enrolled high school pupils in adult education programs that was certified for the annual principal apportionment report and for which state apportionment for the 1991–92 fiscal year was received.

(2) If the district's average daily attendance for concurrently enrolled high school pupils in adult education used in paragraph (1) exceeds 10 percent of the district's total average daily attendance for all pupils in grades 9 to 12, inclusive, for the same reporting period, the district's authorized adult education average daily attendance pursuant to paragraph (1) shall be reduced by multiplying the amount of certified average daily attendance for concurrently enrolled high school pupils in adult education that exceeds 10 percent by 0.33 and subtracting that amount from the district's authorized adult education average daily attendance pursuant to paragraph (1).

(3) For a school district offering adult education courses and classes pursuant to Section 41976.2, add to the amount calculated pursuant to paragraphs (1) or (2) the number of units of average daily attendance claimed by that district for the second principal apportionment made in the 1991–92 fiscal year for independent study pupils 21 years of age or older and pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of the grades 1 to 12, inclusive, since their 18th birthday, as calculated pursuant to Section 46300.1, as that section read on January 1, 1992.

(b) For the 1994–95 fiscal year, the district's authorized adult education average daily attendance shall be one of the following:

(1) The district's adult education average daily attendance added to the district's average daily attendance for concurrently enrolled high school pupils in adult education programs that was certified for the annual principal apportionment report and for which state apportionment for the 1991–92 fiscal year was received.

(2) If the district's average daily attendance for concurrently enrolled high school pupils in adult education used in paragraph (1) exceeds 10 percent of the district's total average daily attendance for all pupils in grades 9 to 12, inclusive, for the same reporting period,

the district's authorized adult education average daily attendance pursuant to paragraph (1) shall be reduced by multiplying the amount of certified average daily attendance for concurrently enrolled high school pupils in adult education that exceeds 10 percent by 0.67 and subtracting that amount from the district's authorized adult education average daily attendance pursuant to paragraph (1).

(3) For a school district offering adult education courses and classes pursuant to Section 41976.2, add to the amount calculated pursuant to paragraphs (1) or (2) the number of units of average daily attendance claimed by that district for the second principal apportionment made in the 1991–92 fiscal year for independent study pupils 21 years of age or older and pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of the grades 1 to 12, inclusive, since their 18th birthday, as calculated pursuant to Section 46300.1, as that section read on January 1, 1992.

(c) For the 1995–96 fiscal year, and each fiscal year thereafter, a school district's adult education average daily attendance for apportionment purposes shall be its authorized adult education average daily attendance for the prior fiscal year multiplied by 1.025.

(d) Commencing July 1, 1995, a school district shall not certify for apportionment purposes, that portion of any average daily attendance in adult education programs generated by pupils who are concurrently enrolled for apportionment purposes in high school that exceeds 10 percent of the districts average daily attendance for all pupils in grades 9 to 12, inclusive, for the same reporting period.

(e) It is the intent of the Legislature that, commencing July 1, 1993, each school district that conducted programs in the 1991–92 fiscal year through independent study for pupils 21 years of age or older and pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday, as calculated pursuant to Section 46300.1, as that section read on January 1, 1992, continue to serve at least the same number of units of average daily attendance through adult education for high school diploma programs in all subsequent years as were funded through those independent study programs in the 1991–92 fiscal year, unless the school district governing board determines that meeting this service requirement would incur costs in excess of the revenue received.

SEC. 8. Section 14 of Chapter 1195 of the Statutes of 1992 is amended to read:

Sec. 14. For the 1992–93 fiscal year, average daily attendance authorized in Section 46300.1 for independent study pupils 21 years of age or older and pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday, shall be calculated by using the same divisor for attendance purposes as is used for adult education.

SEC. 9. (a) It is the intent of the Legislature to maintain the

current level of funding for education of adults in correctional facilities as adjusted for inflation, for the 1993–94 and 1994–95 fiscal years. In order to provide the Legislature with the information necessary to consider changes in this program for the 1995–96 and subsequent fiscal years, the Superintendent of Public Instruction, in consultation with the Department of Finance and the Legislative Analyst, shall conduct a study of the educational programs provided to adults in correctional facilities by school districts and county superintendents of schools and shall make a report to the Joint Legislative Budget Committee on or before August 15, 1994.

(b) The report shall include all of the following:

(1) The method used by the state to support correctional education, including sources of funds and types of education programs and courses.

(2) How funds provided for the education of adults in correctional facilities are currently used by providers and the adequacy of those funds to support instructional programs.

(3) What funding levels would provide adequate support for a variety of services levels in existing programs.

(4) What, if any, steps should be taken to address differences in the availability of state-funded correctional education programs for adults in correctional facilities among the various counties of the state.

SEC. 10. Regardless of when this act becomes effective, it is the intent of the Legislature to make changes in state apportionments for adult education programs for the entire 1993–94 fiscal year. For the purpose of implementing the changes required by this act, the Superintendent of Public Instruction and other public officers shall take all necessary steps to effect the required adjustments, including the authority to adjust allowance computations, apportionments, and disbursements ordered from Section A of the State School Fund and other public funds.

CHAPTER 670

An act to amend Sections 1909, 41841.5, and 46191 of, to amend the heading of Article 9 (commencing with Section 41840) of Chapter 5 of Part 24 of, and to add Sections 1909.5, 41840, 41841.6, 41841.8, and 52616.6 to, the Education Code, relating to adult education.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1909 of the Education Code is amended to read:

1909. (a) From funds appropriated for allocation pursuant to

Sections 2558 and 41841.5, for each county superintendent of schools who maintained schools or classes for adults in correctional facilities in the 1981–82 fiscal year pursuant to Section 1906, and who continues to maintain those schools or classes in each fiscal year thereafter, the Superintendent of Public Instruction shall allow in the 1982–83 fiscal year and each fiscal year thereafter, an amount equal to the actual current expenses of the program, but not to exceed an amount determined as follows:

(1) Compute the prior year statewide average revenue limit per unit of average daily attendance for adults, increased by the amount specified in Section 52616.16 for the current fiscal year.

(2) Multiply the amount computed in paragraph (1) by the average daily attendance of the schools or classes in the current fiscal year.

(3) Multiply the product determined in paragraph (2) for each fiscal year by 0.8.

(b) Notwithstanding subdivision (a), for the 1993–94 and 1994–95 fiscal years, in no event shall the amount allowed to a county superintendent of schools for each unit of average daily attendance pursuant to that subdivision exceed the statewide average revenue limit at which adults in correctional facilities were funded in the 1992–93 fiscal year, as adjusted by any cost-of-living adjustment pursuant to Section 42238.1.

SEC. 2. Section 1909.5 is added to the Education Code, to read:

1909.5. The calculation made pursuant to Section 1909 is subject to Article 9 (commencing with Section 41840) of Chapter 5 of Part 24.

SEC. 3. The heading of Article 9 (commencing with Section 41840) of Chapter 5 of Part 24 of the Education Code is amended to read:

Article 9. Computation of Allowances for Schools and Classes for Prisoners

SEC. 4. Section 41840 is added to the Education Code, to read:

41840. A school district or county superintendent of schools may only claim average daily attendance for apportionment purposes for schools or classes maintained for adults in correctional facilities if those classes meet the requirements of Section 41976. In addition, any of those classes offered pursuant to paragraph (10) of subdivision (a) of Section 41976 shall meet the requirements of Section 51201.5, 51202, or 51203, as the case may be.

SEC. 5. Section 41841.5 of the Education Code is amended to read:

41841.5. (a) The Superintendent of Public Instruction shall allocate to each school district maintaining a secondary school or county superintendent of schools that offers adult education classes for adults in correctional facilities an amount equal to the actual current expense of the district or county superintendent of schools

of maintaining those classes for the fiscal year. The amount so allowed for each unit of average daily attendance in these classes shall in no event exceed the statewide average revenue limit for adults multiplied by 0.8. However, for the 1993–94 and 1994–95 fiscal years, the amount so allowed to a district or county superintendent of schools for each unit of average daily attendance in classes for adults in correctional facilities shall in no event exceed the statewide average revenue limit at which adults in correctional facilities were funded in the 1992–93 fiscal year, as adjusted by any cost-of-living adjustment pursuant to Section 42238.1.

For the purposes of this section "correctional facilities" includes any county jail, county industrial farm, or county or joint county road camp.

Each school district or county superintendent of schools shall receive advanced apportionments as authorized by Sections 41330, 41332, and 41335 on the basis of the cost data report of the district for the preceding fiscal year and each district or county superintendent of schools shall file a preliminary cost data report based upon estimated current expenses.

For purposes of this section, the Superintendent of Public Instruction shall, by rules and regulations, establish minimum standards for the conduct of the adult education classes, including, but not necessarily limited to, attendance requirements and requirements concerning records to be kept and reports to be submitted.

(b) There is hereby appropriated from the General Fund to Section A of the State School Fund the following sums for the following fiscal years for the purposes of subdivision (a):

(1) For the 1980–81 fiscal year	$1,020,100
(2) For the 1981–82 fiscal year and each fiscal year thereafter	$1,113,000

Commencing with the 1982–83 fiscal year, the amounts in paragraph (2) shall be cumulatively increased by 6 percent, unless otherwise provided by law. Commencing with the 1990–91 fiscal year, the amounts in paragraph (2) shall be increased by the percentage change determined pursuant to subdivision (b) of Section 42238.1.

SEC. 6. Section 41841.6 is added to the Education Code, to read:

41841.6. (a) Except as otherwise provided in subdivision (b) of Section 46191, commencing with the 1994–95 fiscal year, and each fiscal year thereafter, for purposes of Sections 1909 and 41841.5, the calculation of the average daily attendance for schools or classes for adults in correctional facilities is subject to the following condition: A school district or county board of education shall not claim or report any increase in average daily attendance in excess of the percentage authorized by subdivision (c) of Section 52616.17, unless the Legislature approves the increase for that fiscal year in the

annual Budget Act.

(b) No state funds shall be allocated to a school district or county board of education for units of average daily attendance that have not been approved by the Legislature pursuant to paragraphs (1) and (2).

SEC. 7. Section 41841.8 is added to the Education Code, to read:

41841.8. Notwithstanding Sections 1909 and 41841.5, or any other provision of law, commencing with the 1994–95 fiscal year and each fiscal year thereafter, any school district or county superintendent of schools that did not maintain schools or classes for adults in correctional facilities in the 1993–94 fiscal year and that subsequently offers those schools or classes shall not claim, or receive apportionments for, more than 20 units of average daily attendance for the first year in which the school district or county superintendent of schools offers those classes.

SEC. 8. Section 46191 of the Education Code is amended to read:

46191. (a) In classes for adults maintained for adults in any county jail, or any correctional facility, including any county industrial farm or county or joint county road camp, a day of attendance is 180 minutes of attendance; but no pupil in such a class shall be credited with more than one day of attendance in any calendar day, nor with more than 15 clock hours of attendance during any one school week.

(b) Notwithstanding subdivision (a), a pupil in that class may be credited with more than one day of attendance in any calendar day, and more than 15 clock hours of attendance during any one school week, so long as the total number of units of average daily attendance calculated on that basis for the school district or county superintendent of schools do not exceed the number of units of average daily attendance actually reimbursed for the 1992–93 fiscal year for the school district or county superintendent of schools, as adjusted for any statutorily authorized rates of growth of units of average daily attendance. However, pursuant to subdivision (e) of Section 46300, no pupil in independent study, in a setting described in subdivision (a), shall be credited with more than one day of attendance in a calendar day.

(c) One adult in a correctional facility may not generate more than one day of attendance if it results in another adult in the same correctional facility being denied classes.

SEC. 9. Section 52616.6 is added to the Education Code, to read:

52616.6. A school district or county superintendent of schools may expend funds allocated to it for the purposes of classes for adults in correctional facilities only for the direct instructional charges of those classes and for related direct and indirect support costs.

SEC. 10. The provisions of this act apply to the 1993–94 fiscal year unless otherwise specified.

CHAPTER 671

An act to amend Sections 21681, 21682, 21683, and 21684 of, and to add Sections 21683.1 and 21683.2 to, the Public Utilities Code, relating to airports.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 21681 of the Public Utilities Code is amended to read:

21681. For purposes of this article:

(a) "Own and operate" means that the public entity shall own the property in fee simple or by a long-term lease of a minimum of 20 years, unless otherwise approved by the department, and shall maintain dominion and control of the property, except that the public entity may provide by contract with a person for the operation and management of an airport otherwise meeting the requirements of this article. Operations of the airport shall be for, and on behalf of, the public entity. All leases to the public entity of property are required to be approved by the department. A lease of the property by the public entity to an agent or agency other than to a public entity does not meet the criteria for participation in airport assistance funds.

(b) "Matching funds" means money which is provided by the public entity and which does not consist of funds previously received from state or federal agencies or public entity funds previously used to match federal or state funds. This definition shall be retroactive to July 1, 1967.

(c) "General aviation" means all aviation with the exception of air carrier and military aviation.

(d) "Public entity" means any city, county, airport district, airport authority, port district, port authority, public district, public authority, political subdivision, airport land use commission, community services district, or public corporation and the University of California.

(e) "Public agency" means the various agencies of the State of California and the federal government.

(f) "Airport and aviation purposes" means expenditures of a capital improvement nature, including the repair or replacement of a capital improvement, and expenditures for compatible land use planning in the area surrounding an airport, for any of the following purposes:

(1) Land acquisition for development and improvement of general aviation aircraft landing facilities.

(2) Grading and drainage necessary for the construction or reconstruction of runways or taxiways.

(3) Construction or reconstruction of runways or taxiways.

(4) Acquisition of "runway clear zones" as defined in current regulations of the Federal Aviation Administration.

(5) Acquisition of easements through, or other interests in, airspace as may be reasonably required for safeguarding aircraft operations in the vicinity of an aircraft landing facility.

(6) Removal of natural obstructions from runway clear zones.

(7) Original installation of "segmented circle airport marker systems" as defined in current regulations of the Federal Aviation Administration.

(8) Original installation of runway, taxiway, boundary, or obstruction lights, together with directly related electrical equipment.

(9) Original erection of minimum security fencing around the perimeter of an aircraft landing facility.

(10) Grading and drainage necessary to provide for parking of transient general aviation aircraft.

(11) Construction or reconstruction of transient general aviation aircraft parking areas.

(12) Servicing of revenue or general obligation bonds issued to finance capital improvements for airport and aviation purposes.

(13) Air navigational facilities.

(14) Engineering and preliminary engineering related directly to a project funded under this article.

(15) Such other capital improvements as may, from time to time, be designated in rules and regulations adopted by the department.

(16) Activities of an airport land use commission in connection with the preparation of a new or updated comprehensive land use plan pursuant to Section 21675.

Expenditures which cannot be clearly identified as capital improvements shall be submitted to the department for consideration and approval.

(17) Airport master plans and airport layout plans.

(g) "Operation and maintenance" means expenditures for wages or salaries, utilities, service vehicles, and all other noncapital expenditures which are included in insurance, professional services, supplies, construction equipment, upkeep and landscaping, and such other items of expenditure which may be designated as "operation and maintenance" in rules and regulations adopted by the department.

(h) "Enplanement" means the boarding of an aircraft by a revenue passenger, including an original, stopover, or transfer boarding thereof. For purposes of this subdivision, a stopover is a deliberate and intentional interruption of a journey by a passenger scheduled to exceed four hours in the case of an intrastate or interstate passenger or not to exceed 24 hours in the case of an international passenger at a point between the point of departure and the point of destination, and a transfer is an occurrence at an intermediate point in an itinerary whereby a passenger or shipment

changes from a flight of one carrier to another flight either of the same or a different carrier with or without a stopover.

SEC. 2. Section 21682 of the Public Utilities Code is amended to read:

21682. (a) The department shall establish individual revolving fund subaccounts for eligible airports in the Aeronautics Account in the State Transportation Fund. Money payable under this section shall be credited to individual airport subaccounts annually, and may be accumulated for a maximum period of five years.

(b) The department shall, subject to Section 21684, credit from the Aeronautics Account to each public entity owning and operating an airport or airports under a valid permit issued by the department for every airport which has not been designated by the Federal Aviation Administration as (1) a reliever airport, as defined in Section 503 (a) (19) of the federal Airport and Airway Improvement Act of 1982, as amended, or (2) a commercial service airport, as defined in Section 503 (a) (5) of the federal Airport and Airway Improvement Act of 1982, as amended, the sum of ten thousand dollars ($10,000) annually for each qualifying airport. These funds shall be paid to public entities upon request for expenditure on preapproved eligible projects. Eligible public entities may submit applications for the withdrawal of credited funds for expenditure on proposed projects in letter form to the department for review and approval. Projects identified shall be for airport and aviation purposes and operation and maintenance purposes. No payment made under this section is transferable, but shall be expended only upon the airport for which the payment is made, unless the department authorizes a payment to be transferred for expenditure on another airport owned or operated by the public entity. The department may establish any accounting systems it deems necessary to provide for the cumulation and expenditure of funds under this subdivision.

(c) If, in any year, there is insufficient money in the Aeronautics Account to make the credits specified in subdivision (b), the department shall, subject to Section 21684, credit to each public entity subaccount an amount which is equal to the total amount of money in the Aeronautics Account multiplied by a percentage equivalent to the proportion which the airport or airports of the public entity for which credit is required to be made pursuant to subdivision (b) bear to the total number of airports for which credit is required to be made pursuant to subdivision (b).

(d) No payment shall be made under this section to any public entity for any airport on which general or commercial aviation activities are substantially restricted if the airport is licensed to conduct these activities by the department. The department shall determine whether or not general or commercial aviation activities are restricted.

(e) The department shall adopt rules and regulations and establish procedures to effect prompt payment to public entities for

eligible airport projects from money credited pursuant to this section.

SEC. 3. Section 21683 of the Public Utilities Code is amended to read:

21683. Any public entity may apply to the department each year for the allocation of funds for the acquisition or development of airports. The commission may, pursuant to rules and regulations promulgated by the department, make an allocation to the public entity if it determines that the proposed acquisition or development is feasible and in accordance with the policies and standards established by the department. The department shall make recommendations to the commission on all applications. Such allocations shall be represented as subventions in the department budget in accordance with Section 21206.

No moneys paid under this section shall be expended for operation and maintenance. No payment shall be made under this section to any public entity for any airport on which general or commercial aviation activities are substantially restricted if the airport is licensed to conduct such activities by the department. The department shall determine whether or not general or commercial aviation activities are restricted.

SEC. 4. Section 21683.1 is added to the Public Utilities Code, to read:

21683.1. At the discretion of the commission, any balance remaining in the Aeronautics Account, after the payments made under Section 21682, may be used to provide a portion of the local match for federal Airport Improvement Program grants. Matching shall be provided only for grants that are for airport and aviation purposes at general aviation airports, or at airports that have been designated by the Federal Aviation Administration as reliever airports, as defined in Section 503(a) (19) of the federal Airport and Airway Improvement Act of 1982, as amended.

Funds shall not be allocated by the commission until the federal grant offer is accepted by the public entity. Upon allocation by the commission, the department may pay a public entity an amount equal to 5 percent of the amount of a federal Airport Improvement Program grant. These funds are excluded from the requirements of Section 21684.

SEC. 5. Section 21683.2 is added to the Public Utilities Code, to read:

21683.2. Any balance remaining in the Aeronautics Account, after the payments made under Section 21682 and Section 21683.1, shall be used at the discretion of the commission for airport and aviation purposes subject to the provisions of Section 21684.

SEC. 6. Section 21684 of the Public Utilities Code is amended to read:

21684. (a) No payment shall be made to a public entity pursuant to this article unless the public entity has established a special aviation fund in which all payments received by a public entity

under this article shall be deposited for expenditure solely for airport and aviation purposes. No payment shall be made to a public entity for a project pursuant to Section 21683.2 unless the public entity deposits in its special aviation fund a sum from other than state or federal sources, established annually by the commission at not less than 10 percent nor more than 50 percent of the nonfederal portion of the project.

Notwithstanding the provisions of this subdivision requiring matching funds, the department shall pay to each public entity owning and operating an airport or airports the annual amount that is in accordance with Section 21682.

(b) No payment shall be made for any airport to the University of California pursuant to this article unless the university has established a special aviation fund in which all payments received by the university under this article shall be deposited for expenditure solely for airport and aviation purposes. No payment shall be made for any airport to the University of California pursuant to Section 21683.2 unless the university deposits in its special aviation fund each year, for expenditure solely for airport and aviation purposes, a sum from nonstate or nonfederal funds based on the rate established annually by the commission pursuant to subdivision (a), or unless a city located within 10 miles of the airport or the county within which the airport is located pays to the university a sum based on the rate established annually by the commission pursuant to subdivision (a). However, any sums so deposited by the university or paid by the city or county may be considered jointly as meeting the requirements of this section. The payments received from a city or county pursuant to these sections are to be expended solely for the airport and for aviation purposes related to such airport. All payments received by the university shall be deposited in its special aviation fund.

CHAPTER 672

An act to amend Section 27288.2 of the Government Code, and to amend Section 5029 of the Public Resources Code, relating to historical resources.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 27288.2 of the Government Code is amended to read:

27288.2. Pursuant to Section 5029 of the Public Resources Code, after March 15, 1993, the county recorder shall record a certified resolution establishing an historical resources designation issued by the State Historical Resources Commission or a local agency, or unit

thereof. For previously designated properties, the county may record the certified resolution establishing the historical resources designation upon submission.

SEC. 2. Section 5029 of the Public Resources Code is amended to read:

5029. (a) The commission shall, within 90 days after the approval by the director after of the issuance by the commission of an historical resources designation for an individual property, submit to the county recorder for recordation, and the county recorder shall record, a certified resolution establishing the historical resources designation. For historical resources designations approved prior to March 15, 1993, the commission may submit for recordation, and the county recorder shall record, a certified resolution of historical resources designation.

(b) Any local agency, or unit thereof, shall, within 90 days of an historical resources designation by the local agency or unit for an individual property, submit to the county recorder for recordation, and the county recorder shall record, a certified resolution establishing the historical resources designation. For historical resources designations made prior to March 15, 1993, the local agency, or unit thereof, may submit for recordation, and the county recorder shall record, a certified resolution of historical resources designation.

(c) The resolution shall include the name of the current property owner, the designating entity, the specific historical resources designation, and a legal description of the property.

(d) The recorder shall index the recorded resolutions of the commission or local agency, or unit thereof, listing the respective agency as the "grantor" and the current owner as the "grantee" for that purpose.

(e) For the purpose of this section, the term "historical resources designation" means the California Register of Historical Resources and any local historical resources designation resulting in restrictions on demolitions or alterations.

(f) This section shall have no effect on the right, title, or interest in the property identified after March 15, 1993, which is acquired by a bona fide purchaser for value between the time of designation of the property as a historical resource and time that the designation is recorded unless the purchaser had actual knowledge of the designation.

(g) This section shall have no effect upon the title to any property that is subject to this section.

CHAPTER 673

An act to amend Sections 17710, 17730, 17731, 17732, and 17736 of the Welfare and Institutions Code, relating to developmental disabilities, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 17710 of the Welfare and Institutions Code is amended to read:

17710. Unless otherwise specified in this part:

(a) "Child with special health care needs" means a child who has a condition that can rapidly deteriorate resulting in permanent injury or death or who has a medical condition that requires specialized in-home health care, and who either has been adjudged a dependent of the court pursuant to Section 300, has not been adjudged a dependent of the court pursuant to Section 300 but is in the custody of the county welfare department, or has a developmental disability and is receiving services and case management from a regional center.

(b) "County" means the county welfare department.

(c) "Department" means the State Department of Social Services.

(d) "Individualized health care plan team" means those individuals who develop a health care plan for a child with special health care needs in a specialized foster care home, as defined in subdivision (i) or group home, which shall include the child's primary care physician or other health care professional designated by the physician, any involved medical team, and the county social worker or regional center worker, and any health care professional designated to monitor the child's individualized health care plan pursuant to paragraph (8) of subdivision (c) of Section 17731, including, if the child is in a certified home, the registered nurse employed by or under contract with the certifying agency to supervise and monitor the child. The child's individualized health care plan team may also include, but shall not be limited to, a public health nurse, representatives from the California Children's Services Program or the Child Health and Disability Prevention Program, regional centers, the county mental health department and where reunification is the goal, the parent or parents, if available. In addition, where the child is in a specialized foster care home, the individualized health care plan team may include the prospective specialized foster parents, who shall not participate in any team decision pursuant to paragraph (6) of subdivision (c) of Section 17731 or pursuant to paragraph (3) of subdivision (a), or

subparagraph (A) of paragraph (2) of subdivision (b) of Section 17732.

(e) "Director" means the Director of Social Services.

(f) "Level of care" means a description of the specialized in-home health care to be provided to a child with special health care needs by the foster family.

(g) Medical conditions requiring specialized in-home health care require dependency upon one or more of the following: enteral feeding tube, total parenteral feeding, a cardiorespiratory monitor, intravenous therapy, a ventilator, oxygen support, urinary catheterization, renal dialysis, ministrations imposed by tracheostomy, colostomy, ileostomy, or other medical or surgical procedures or special medication regimens, including injection, and intravenous medication.

(h) "Specialized in-home health care" includes, but is not limited to, those services identified by the child's primary physician as appropriately administered in the home by any one of the following:

(1) A parent trained by health care professionals where the child is being placed in, or is currently in, a specialized foster care home.

(2) Group home staff trained by health care professionals pursuant to the discharge plan of the facility releasing the child where the child was placed in the home as of November 1, 1993, and who is currently in the home.

(3) A health care professional, where the child is placed in a group home after November 1, 1993. The health care services provided pursuant to this paragraph shall not be reimbursable costs for the purpose of determining the group home rate under Section 11462.

(i) "Specialized foster care home" means any of the following foster homes where the foster parents reside in the home and have been trained to provide specialized in-home health care to foster children:

(1) Licensed foster family homes, as defined in paragraph (5) of subdivision (a) of Section 1502 of the Health and Safety Code.

(2) Licensed small family homes, as defined in paragraph (6) of subdivision (a) of Section 1502 of the Health and Safety Code.

(3) Certified family homes, as defined in subdivision (d) of Section 1506 of the Health and Safety Code, that have accepted placement of a child with special health care needs who is under the supervision and monitoring of a registered nurse employed by, or on contract with, the certifying agency, and who is either of the following:

(A) A dependent of the court under Section 300.

(B) Developmentally disabled and receiving services and case management from a regional center.

SEC. 2. Section 17730 of the Welfare and Institutions Code is amended to read:

17730. The department shall develop a program to establish specialized foster care homes for children with special health care needs with persons specified in subdivision (h) of Section 17710. The

department shall limit the use of group homes for children with special health care needs pursuant to subdivisions (d) and (e) of Section 17732. The program shall conform to the requirements set forth in this chapter, and shall be integrated with the foster care and child welfare services programs authorized by Article 5 (commencing with Section 11400) of Chapter 2 of Part 3 and Chapter 5 (commencing with Section 16500) of Part 4.

The department, in administering the licensing program, shall not evaluate or have any responsibility for the evaluation of the in-home health care provided in specialized foster care homes or group homes.

This program shall be conducted by county welfare departments in conformance with procedures established by the department in accordance with this chapter.

SEC. 3. Section 17731 of the Welfare and Institutions Code is amended to read:

17731. (a) The county shall develop a plan to place children with special health care needs in foster care. This plan shall be submitted to the State Department of Social Services and the State Department of Health Services, not later than April 1, 1990, before beginning placement of children with special health care needs in specialized foster care homes. This subdivision shall not invalidate any placement made before April 1, 1990. A county that has not submitted a plan by April 1, 1990, shall not continue to make placements of children with special health care needs until the plan has been submitted.

(b) Unless a local lead agency has been designated within the county, as described in Item 4260-113-890 of the Budget Act of 1989, the county department of social services shall be the lead agency with the responsibility of developing the plan to be submitted pursuant to subdivision (a). The county plan shall be formalized in an interagency agreement between the county department of social services and the other county and private agencies that are the involved parties.

(c) The county plan shall meet all the requirements specified in this subdivision. The regional center shall not be required to submit a plan. However, all requirements specified in this subdivision shall be met prior to a regional center placement of a child who is not a court dependent and who has special health care needs.

(1) Prior to the placement of a child with special health care needs, an individualized health care plan, which may be the hospital discharge plan, shall be prepared for the child and, if necessary, in-home health support services shall be arranged. The individualized health care plan team shall be convened by the county department of social services caseworker or the regional center caseworker, to discuss the specific responsibilities of the person or persons specified in subdivision (h) of Section 17710 for provision of in-home health care in accordance with the individualized health care plan developed by the child's physician or

his or her designee. The plan may also include the identification of any available and funded medical services that are to be provided to the child in the home, including, but not limited to, assistance from registered nurses, licensed vocational nurses, public health nurses, physical therapists, and respite care workers. The individualized health care plan team shall delineate in the individualized health care plan the coordination of health and related services for the child and the appropriate number of hours needed to be provided by any health care professional designated to monitor the child's individualized health care plan pursuant to paragraph (8), including, if the child is in a certified home, the registered nurse employed by or on contract with the certifying agency to supervise and monitor the child.

(2) A child welfare services case plan or regional center individual program plan shall be developed in accordance with applicable regulations, and arrangements made for nonmedical support services.

(3) Foster parents shall be trained by health care professionals pursuant to the discharge plan of the facility releasing the child being placed in, or currently in, foster care. Additional training shall be provided as needed during the placement of the child and to the child's biological parent or parents when the child is being reunified with his or her family.

(4) Children with special health care needs shall be placed in the home of the prospective foster parent subsequent to training by a health care professional pursuant to the discharge plan of the facility releasing the child being placed in foster care.

(5) Assistant caregivers, on-call assistants, respite care workers, and other personnel caring for children with special health care needs shall complete training or additional training by a health care professional in accordance with paragraph (3).

(6) No foster parent who is a health care professional or staff member who is a health care professional shall be required to complete any training or additional training determined by the responsible individualized health care plan team to be unnecessary on the basis of his or her professional qualification and expertise.

(7) No health care professional shall provide in-home health care to any child with special health care needs placed in a group home after November 1, 1993, unless the individual health care plan team for the child:

(A) Documents that the health care professional has the necessary qualifications and expertise to meet the child's in-home health care needs.

(B) Updates the documentation provided pursuant to subparagraph (A) each time the child's special health care needs change.

(8) Specialized foster care homes and group homes caring for children with special health care needs shall be monitored by the county or regional center according to applicable regulations. The

health care plan for each child with special health care needs shall designate which health care professional shall monitor the child's ongoing health care, including in-home health care provided by persons specified in subdivision (h) of Section 17710. Where the child is placed in a certified home, the designated health care professional shall be the registered nurse employed by or on contract with the foster family agency to supervise and monitor the child.

(9) The workload of the health care professional supervising or monitoring a child's ongoing health care in a certified home shall be based on the cumulative total hours specified in the individualized health care plans for children assigned to the health care professional. In no case shall the health care professional's regular workload based on the cumulative total hours specified in the individualized health care plans for children assigned to the health care professional be more than 40 hours per week.

(10) The child's individualized health care plan shall be reassessed at least every six months during the time the child is placed in the specialized foster care home, to ensure that specialized care payments are appropriate to meet the child's health care needs.

(11) The placement agencies shall coordinate the sources of funding and services available to children with special health care needs in order to maximize the social services provided to these children and to avoid duplication of programs and funding.

SEC. 4. Section 17732 of the Welfare and Institutions Code is amended to read:

17732. No more than two foster care children shall reside in a specialized foster care home with the following exceptions:

(a) A specialized foster care home may have a third child with or without special health care needs placed in that home provided that the licensed capacity, as determined by the department pursuant to paragraph (6) of subdivision (a) of Section 1502 of the Health and Safety Code is not exceeded and provided that all of the following conditions have been met:

(1) The child's placement worker has determined and documented that no other placement is available.

(2) For each child in placement and the child to be placed, the child's placement worker has determined that his or her psychological and social needs will be met by placement in the home and has documented that determination. New determinations shall be made and documented each time there is an increase or turnover in foster care children and the two-child capacity limit is exceeded.

(3) The individualized health care plan team responsible for the ongoing care of each child with special health care needs involved has determined that the two-child limit may be exceeded without jeopardizing the health and safety of that child, and has documented that determination. New determinations shall be made and documented each time there is an increase or turnover in foster care children and the two-child capacity limit is exceeded.

(b) A licensed small family home, but not a certified home, may

exceed the placement limit specified in subdivision (a) and accept children with or without special health care needs up to the licensed capacity as determined by the department pursuant to paragraph (6) of subdivision (a) of Section 1502 of the Health and Safety Code if the conditions in subdivision (a) have been met for both the third child and each child placed thereafter, and the following additional conditions have been met:

(1) At least one of the children in the facility is a regional center client monitored in accordance with Section 56001 and following of Title 17 of the California Code of Regulations.

(2) Whenever four or more foster care children are physically present in the facility, the licensee of the small family home has the assistance of a caregiver to provide specialized in-home health care to the children except that:

(A) Night assistance shall not be required for those hours that the individualized health care plan team for each child with special health care needs has documented that the child will not require specialized medical services during that time.

(B) The department may determine that additional assistance is required to provide appropriate care and supervision for all children in placement. The determination shall only be made after consultation with the appropriate regional center and any appropriate individual health care teams.

(3) On-call assistance is available at all times to respond in case of an emergency. The on-call assistant shall meet the requirements of paragraph (5) of subdivision (c) of Section 17731.

(4) The home is sufficient in size to accommodate the needs of all children in the home.

(c) Notwithstanding Section 1523 of the Health and Safety Code, a foster family home which has more than three children with special health care needs in its care as of January 1, 1992, and which applies for licensure as a small family home in order to continue to provide care for those children, shall be exempt from the application fee.

(d) Except for children with special health care needs placed in group homes before January 1, 1992, no child with special health care needs may be placed in any group home or combination of group homes for longer than a short-term placement of 120 calendar days. The short-term placement in the group home shall be on an emergency basis for the purpose of arranging a subsequent placement in a less restrictive setting, such as with the child's natural parents or relatives, with a foster parent or foster family agency, or with another appropriate person or facility. The 120-day limitation shall not be extended, except by the approval of the director or his or her designee. For children placed after January 1, 1992, the 120-day limitation shall begin on the effective date of the amendments to this section made during the 1993 portion of the 1993–94 Regular Session.

(e) A child with special health care needs shall not be placed in a group home unless the child's placement worker has determined

and documented that the group home has a program that meets the specific needs of the child being placed and there is a commonalty of needs with the other children in the group home.

SEC. 5. Section 17736 of the Welfare and Institutions Code is amended to read:

17736. Notwithstanding any other provision of law, including Sections 1250, 1251, 1254, 1270, 1501, 1502, 1505, 1507, 1521, 1530.6 (as added by Chapter 391 of the Statutes of 1977), 1550, 11002, and 11154 of the Health and Safety Code, and Sections 2052, 2725, 2732, and 2795 of the Business and Professions Code, all of the following shall apply:

(a) (1) Counties and regional centers shall be permitted to place children with special health care needs in foster family homes, small family homes, and group homes pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code.

(2) Foster family agencies shall be permitted to place children with special health care needs in certified homes pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code.

(b) Counties, regional centers, and foster family agencies shall permit all of the following:

(1) A foster parent, an assistant caregiver, an on-call assistant, and a respite caregiver meeting the requirements of paragraphs (3), (5), and (6) of subdivision (c) of Section 17731 to provide, in a specialized foster care home, specialized in-home health care to a foster child, as described in the child's individualized health care plan.

(2) The licensee and other personnel meeting the requirements of paragraphs (3), (5), and (6) of subdivision (c) of Section 17731 to provide, in a group home, specialized in-home health care to a child, as described in his or her individualized health care plan, provided that the child was placed as of November 1, 1993.

SEC. 6. Upon recommendation of the Director of Social Services, the Department of Finance may authorize the transfer of amounts, cumulatively not to exceed four million three hundred seventy-nine thousand dollars ($4,379,000), from Item 5180-101-001(a) of the Budget Act of 1993, local assistance, State Department of Social Services, Aid to Families with Dependent Children to either Item 5180-141-001(a) of the Budget Act of 1993, local assistance, State Department of Social Services, County Administration or Item 5180-151-001(d) of the Budget Act of 1993, local assistance, State Department of Social Services, Child Welfare Services, or both, in order to provide incentives and assistance to counties in the area of specialized care, pursuant to subparagraph (B) of paragraph (4) of subdivision (e) of Section 11461 of the Welfare and Institutions Code.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that children with special medical needs may receive care in certified family homes at the earliest possible time, it is necessary

that this bill take effect immediately.

CHAPTER 674

An act to amend Section 42003 of, and to add Section 42009 to, the Vehicle Code, relating to vehicles.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 42003 of the Vehicle Code is amended to read:

42003. (a) A judgment that a person convicted of an infraction be punished by a fine may also provide for the payment to be made within a specified time or in specified installments. A judgment granting a defendant time to pay the fine shall order that if the defendant fails to pay the fine or any installment thereof on the date that it is due, he or she shall appear in court on that date for further proceedings. Willful violation of the order is punishable as contempt.

(b) A judgment that a person convicted of any other violation of this code be punished by a fine may also order, adjudge, and decree that the person be imprisoned until the fine is satisfied. In all of these cases, the judgment shall specify the extent of the imprisonment which shall not exceed one day for every thirty dollars ($30) of the fine, nor extend in this case beyond the term for which the defendant might be sentenced to imprisonment for the offense of which he or she was convicted.

(c) In any case when a person appears before a traffic referee or judge of the municipal court or superior court for adjudication of a violation of this code, the court, upon request of the defendant, shall take into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, and shall make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of probation, fines, and restitution, or any combination thereof, and of conducting the presentence investigation and preparing the presentence report made pursuant to Section 1203, if applicable. The reasonable cost of these services and of probation shall not exceed the amount determined to be the actual average cost thereof. The court shall order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of those costs or the court or traffic referee may make this determination at a hearing. At that hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, to confront and cross-examine adverse witnesses, to disclosure of the evidence against him or her, and to a

written statement of the findings of the court or the county officer. If the court determines that the defendant has the ability to pay all or part of the costs, the court shall set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability; or, with the consent of a defendant who is placed on probation, the court shall order the probation officer to set the amount of payment, which shall not exceed the maximum amount set by the court, and the manner in which the payment shall be made to the county. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

The court may hold additional hearings during the probationary period. If practicable, the court or the probation officer shall order payments to be made on a monthly basis. Execution may be issued on the order in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

A payment schedule for reimbursement of the costs of presentence investigation based on income shall be developed by the probation department of each county and approved by the presiding judges of the municipal and superior courts.

(d) The term "ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the presentence report, and probation, and includes, but is not limited to, all of the following regarding the defendant:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the defendant will be able to obtain employment within the six-month period from the date of the hearing.

(4) Any other factors that may bear upon the defendant's financial capability to reimburse the county for the costs.

(e) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the rendering court to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment. The court shall advise the defendant of this right at the time of rendering of the judgment.

SEC. 1.5. Section 42003 of the Vehicle Code is amended to read:

42003. (a) A judgment that a person convicted of an infraction be punished by a fine may also provide for the payment to be made within a specified time or in specified installments. A judgment granting a defendant time to pay the fine shall order that if the

defendant fails to pay the fine or any installment thereof on the date that it is due, he or she shall appear in court on that date for further proceedings. Willful violation of the order is punishable as contempt.

(b) A judgment that a person convicted of any other violation of this code be punished by a fine may also order, adjudge, and decree that the person be imprisoned until the fine is satisfied. In all of these cases, the judgment shall specify the extent of the imprisonment which shall not exceed one day for every seventy-five dollars ($75) of the total fine, as defined in Section 1463 of the Penal Code, nor extend in this case beyond the term for which the defendant might be sentenced to imprisonment for the offense of which he or she was convicted.

(c) In any case when a person appears before a traffic referee or judge of the municipal court or superior court for adjudication of a violation of this code, the court, upon request of the defendant, shall take into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, and shall make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of probation, fines, and restitution, or any combination thereof, and of conducting the presentence investigation and preparing the presentence report made pursuant to Section 1203, if applicable. The reasonable cost of these services and of probation shall not exceed the amount determined to be the actual average cost thereof. The court shall order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of those costs or the court or traffic referee may make this determination at a hearing. At that hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, to confront and cross-examine adverse witnesses, to disclosure of the evidence against him or her, and to a written statement of the findings of the court or the county officer. If the court determines that the defendant has the ability to pay all or part of the costs, the court shall set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability; or, with the consent of a defendant who is placed on probation, the court shall order the probation officer to set the amount of payment, which shall not exceed the maximum amount set by the court, and the manner in which the payment shall be made to the county. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

The court may hold additional hearings during the probationary period. If practicable, the court or the probation officer shall order payments to be made on a monthly basis. Execution may be issued on the order in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

A payment schedule for reimbursement of the costs of presentence investigation based on income shall be developed by the probation department of each county and approved by the presiding judges of the municipal and superior courts.

(d) The term "ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the presentence report, and probation, and includes, but is not limited to, all of the following regarding the defendant:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the defendant will be able to obtain employment within the six-month period from the date of the hearing.

(4) Any other factors that may bear upon the defendant's financial capability to reimburse the county for the costs.

(e) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the rendering court to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment. The court shall advise the defendant of this right at the time of rendering of the judgment.

SEC. 2. Section 42009 is added to the Vehicle Code, to read:

42009. (a) For any offense specified in subdivision (b), committed by the driver of a vehicle within a highway construction or maintenance area, during any time when traffic is regulated or restricted through or around that area pursuant to Section 21367, when the highway construction or maintenance is actually being performed in the area by workers acting in their official capacity, the fine, in a misdemeanor case, shall be double the amount otherwise prescribed. In an infraction case, the fine shall be one category higher than the penalty otherwise prescribed by the uniform traffic penalty schedule established pursuant to Section 40310.

(b) A violation of any of the following provisions is an offense which is subject to subdivision (a):

(1) Section 21367, relating to regulation of traffic at a construction site.

(2) Article 3 (commencing with Section 21450) of Chapter 2 of Division 11, relating to obedience to traffic devices.

(3) Chapter 3 (commencing with Section 21650) of Division 11, relating to driving, overtaking, and passing.

(4) Chapter 4 (commencing with Section 21800) of Division 11, relating to yielding the right-of-way.

(5) Chapter 6 (commencing with Section 22100) of Division 11, relating to turning and stopping and turn signals.

(6) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.

(7) Chapter 8 (commencing with Section 22450) of Division 11, relating to special traffic stops.

(8) Section 23103, relating to reckless driving.

(9) Section 23104, relating to reckless driving which results in bodily injury to another.

(10) Section 23109, relating to speed contests.

(11) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.

(12) Section 23153, relating to driving under the influence of alcohol or a controlled substance, which results in bodily injury to another.

(13) Section 23220, relating to drinking while driving.

(14) Section 23221, relating to drinking in a motor vehicle while on the highway.

(15) Section 23222, relating to driving while possessing an open alcoholic beverage container.

(16) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.

(17) Section 23224, relating to being a driver or passenger under the age of 21 possessing an open alcoholic beverage container.

(18) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.

(19) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.

(c) This section applies only when construction or maintenance work is actually being performed by workers, and there are work zone traffic control devices, traffic controls or warning signs, or any combination of those, to notify motorists and pedestrians of construction or maintenance workers in the area.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 42003 of the Vehicle Code proposed by both this bill and SB 114. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 42003 of the Vehicle Code, and (3) this bill is enacted after SB 114, in which case Section 1 of this bill shall not become operative.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become

operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 675

An act to amend Sections 48654, 48656, 48660.5, 48676, 48680 of, and to repeal Section 48655 of, the Public Resources Code, relating to oil recycling.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 48654 of the Public Resources Code is amended to read:

48654. On and after July 1, 1994, the money in the fund may be expended by the board for the administration of this chapter, for expenditures pursuant to Section 48656, and by the department for inspections and reports pursuant to Section 48661 only upon appropriation by the Legislature in the annual Budget Act.

SEC. 2. Section 48655 of the Public Resources Code is repealed.

SEC. 3. Section 48656 of the Public Resources Code is amended to read:

48656. After all of the expenditures pursuant to Section 48653 have been made, the balance remaining in the fund shall be available to the board for expenditure solely for implementation of subdivisions (b) and (c) of Section 48631 and Section 48660.5. The board shall not expend more than two hundred thousand dollars ($200,000) to implement Section 48660.5 and at least 40 percent of the moneys remaining in the fund shall be expended for the purposes of subdivision (a) of Section 48632, at least 10 percent shall be expended for the purposes of subdivision (b) of Section 48632, and at least 20 percent shall be expended for the purposes of subdivision (c) of Section 48631.

SEC. 4. Section 48660.5 of the Public Resources Code is amended to read:

48660.5. (a) If the board finds that a shipment of used oil from a certified used oil collection center is contaminated by hazardous materials in excess of that which generally occurs in normal use, which renders the used oil infeasible for recycling, and requires that the used oil be destroyed at a substantially higher cost than the cost generally to recycle used oil, the board shall, upon application by the used oil collection center, reimburse the center for the additional disposal cost, subject to the eligibility requirements of subdivision (b), except as provided in subdivision (c).

(b) A certified used oil collection center is eligible for reimbursement only if it demonstrates to the satisfaction of the board

all of the following:

(1) The center has established procedures to ensure that the used oil it generates and accepts from the public will not be mixed with other hazardous wastes, especially halogenated wastes. These procedures shall include, but not be limited to, instructing the public and employees that used oil shall not be mixed with other hazardous waste. The board shall not require a center to test used oil received from the public as part of these procedures.

(2) The shipment contains not more than five gallons or thirty pounds of contaminants combined, based on the contaminant concentrations and the total volume or weight of the shipment.

(c) In any calendar year, a used oil collection center shall be reimbursed for not more than one shipment and for not more than five thousand dollars ($5,000) in disposal costs, subject to the availability of funds pursuant to Section 48656.

SEC. 5. Section 48676 of the Public Resources Code is amended to read:

48676. (a) The board shall establish reporting periods for the reporting of accumulated industrial and lubricating oil sales and used oil recycling rates, and each reporting period shall be six months. The board shall issue a report based on the information received within 120 days of the end of each reporting period.

(b) As part of the report required pursuant to Section 40507, the board shall summarize industrial and lubricating oil sales and recycling rates, the results of programs funded pursuant to this chapter, recommendations, if any, for statutory changes to the program, including changes in the amounts of the payment required by Section 48650 and the recycling incentive, and plans for present and future programs to be conducted over the next two years.

SEC. 6. Section 48680 of the Public Resources Code is amended to read:

48680. (a) Except as provided in subdivision (b), in addition to any other civil or criminal penalties, any person convicted of a violation of this chapter is guilty of an infraction, which is punishable by a fine of not more than one hundred dollars ($100) per day for each day the violation occurs.

(b) (1) Every person who, with intent to defraud, does not accurately report the amount of oil sold, collected, or transferred pursuant to Article 8 (commencing with Section 48670), who, with intent to defraud, does not make payments as required by Section 48650, or who knowingly receives or pays a recycling incentive for oil upon which a payment has not been made pursuant to Section 48650 is guilty of fraud. If the money obtained or withheld is four hundred dollars ($400) or less, the fraud is punishable by imprisonment in the county jail for not more than six months, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment. If the money obtained or withheld is more than four hundred dollars ($400), the fraud is punishable by imprisonment in the county jail for not more than one year or

imprisonment in the state prison, by a fine not exceeding ten thousand dollars ($10,000), or twice the late or unmade payments plus interest, whichever is greater, or by both that fine and imprisonment.

(2) Any person who claims an exemption pursuant to this chapter which the person knows to be false, and makes that claim for the purpose of willfully evading the payment of any fee imposed pursuant to this chapter, is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one year. The person shall also be subject to payment of a fine not to exceed five thousand dollars ($5,000). The fine shall be distributed as follows:

(A) Fifty percent to the local jurisdiction which undertook the prosecution.

(B) Fifty percent to the General Fund.

(c) Any person who violates this chapter may be assessed a civil penalty by the board of not more than one hundred dollars ($100) per day for each day the violation occurs or continues, pursuant to a hearing and notice.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 676

An act to amend Section 3351 of, to add Sections 3003, 3006, 3054, 3279.3, 3281, 3282, 3283, 3284, 3285.1, 3285.2, 3285.3, and 3285.4 to, and to repeal and add Section 3285 of, the Health and Safety Code, relating to communicable disease.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 3003 is added to the Health and Safety Code, to read:

3003. As used in this division, a person has "active tuberculosis disease" when either one of the following occur:

(a) A smear or culture taken from any source has tested positive for tuberculosis and the person has not completed the appropriate prescribed course of medication for tuberculosis disease.

(b) There is radiographic, current clinical, or laboratory evidence sufficient to establish a medical diagnosis of tuberculosis for which treatment is indicated.

SEC. 2. Section 3006 is added to the Health and Safety Code, to read:

3006. As used in this division the following terms have the following meanings, unless the context indicates otherwise:

(a) "Infectious tuberculosis disease" means active or suspected active tuberculosis disease in an infectious state.

(b) "Tuberculosis infection" means the latent phase of tuberculosis, during which the infected person cannot spread tuberculosis to others.

(c) "Heightened risk of tuberculosis exposure" means likely exposure to persons with infectious tuberculosis disease.

(d) "The appropriate prescribed course of medication for tuberculosis disease" means that course recommended by the most recent guidelines of the department, the most recent guidelines of the Centers for Disease Control and Prevention, or the most recent guidelines of the American Thoracic Society.

(e) "Directly observed therapy" means the appropriately prescribed course of treatment for tuberculosis disease in which the prescribed antituberculosis medications are administered to the person or taken by the person under direct observation.

(f) An "examination" for tuberculosis infection or disease means conducting tuberculosis specific tests, including, but not limited to, Mantoux tuberculin skin tests, laboratory examination, and X-rays, as recommended by the most recent guidelines of any of the following:

(1) The local health officer.

(2) The department.

(3) The Centers for Disease Control and Prevention.

(4) The American Thoracic Society.

(g) "State correctional institution" means a prison, institution, or other facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority.

(h) "Local detention facility" is defined in Section 6031.4 of the Penal Code.

(i) "Penal institution" means either a state correctional institution or a local detention facility.

(j) "Health facility" means a licensed health facility as defined in Sections 1250, 1250.2, and 1250.3.

SEC. 3. Section 3054 is added to the Health and Safety Code, to read:

3054. (a) The state director may order examinations for tuberculosis infection in the following persons for the purpose of directing preventive measures:

(1) Persons in close contact with persons with infectious tuberculosis disease.

(2) Other persons for whom the state director has reasonable grounds to determine are at heightened risk of tuberculosis

exposure.

(b) An order for examination for tuberculosis infection shall be in writing and shall include other terms and conditions as may be necessary to protect the public health.

SEC. 4. Section 3279.3 is added to the Health and Safety Code, to read:

3279.3. The state department shall be the lead agency for all tuberculosis control and prevention activities at the state level.

SEC. 5. Section 3281 is added to the Health and Safety Code, to read:

3281. (a) A health facility, local detention facility, or state correctional institution shall not discharge or release any of the following persons unless subdivision (e) is complied with:

(1) A person known to have active tuberculosis.

(2) A person who the medical staff of the health facility or of the penal institution has reasonable grounds to believe has active tuberculosis.

In addition, persons specified in this subdivision may be discharged from a health facility only after a written treatment plan described in Section 3282 is approved by a health officer. Persons specified in this subdivision may be discharged from a penal institution only after a written treatment plan described in Section 3282 is received by a health officer. This subdivision shall not apply to transfers within the state correctional system or to interfacility transfers occurring within a local detention facility system.

(b) No health facility shall transfer a person described in paragraph (1) or (2) of subdivision (a) to another health facility unless subdivision (e) is complied with. This subdivision shall not apply to transfers within the state correctional system or to interfacility transfers occurring within a local detention facility system.

(c) No state correctional institution or local detention facility shall transfer a person described in paragraph (1) or (2) of subdivision (a) from a state to a local, or from a local to a state, penal institution unless notification and a written treatment plan are received by the chief medical officer of the penal institution receiving the person.

(d) No local detention facility shall transfer a person described in paragraphs (1) and (2) of subdivision (a) to a local detention facility in another jurisdiction unless subdivision (e) is complied with and notification and a written treatment plan are received by the chief medical officer of the local detention facility receiving the person.

(e) Persons specified in paragraph (1) or (2) of subdivision (a), in subdivision (b), in subdivision (c), or in subdivision (d) may be discharged, released, or transferred, as the case may be, only after notification and a written treatment plan pursuant to Section 3282 has been received by the local health officer. When prior notification is not possible or would jeopardize the public safety or the safety and security of the penal institution, then the notification and treatment plan shall be submitted within 24 hours of discharge, release, or

transfer.

SEC. 6. Section 3282 is added to the Health and Safety Code, to read:

3282. Each health care provider who treats a person for active tuberculosis, each person in charge of a health facility, or each person in charge of a clinic providing outpatient treatment for active tuberculosis shall promptly report to the local health officer at the times that the health officer requires, but no less frequently than when there are reasonable grounds to believe that a person has active tuberculosis, and when a person ceases treatment for tuberculosis. Situations in which the provider may conclude that the patient has ceased treatment include times when the patient fails to keep an appointment, relocates without transferring care, or discontinues care. The report shall include an individual treatment plan that indicates the name of the medical provider who has specifically agreed to provide medical care, the address of the person, and any other pertinent clinical or laboratory information required by the health officer. Each health care provider who treats a person with active tuberculosis disease, and each person in charge of a health facility or a clinic providing outpatient treatment for active tuberculosis disease, shall maintain written documentation of each patient's adherence to his or her individual treatment plans. Nothing in this section shall authorize the disclosure of test results for human immunodeficiency virus (HIV) unless authorized by Chapter 1.11 (commencing with Section 199.20) of, Chapter 1.12 (commencing with Section 199.30) of, and Chapter 1.13 (commencing with Section 199.42) of, Division 1.

In the case of a parolee under the jurisdiction of the Department of Corrections, the health officer shall notify the medical officer of the parole region when there are reasonable grounds to believe that the parolee has active tuberculosis disease and when the parolee ceases treatment for tuberculosis. Situations where the health officer may conclude that the parolee has ceased treatment include times when the parolee fails to keep an appointment, relocates without transferring care, or discontinues care.

SEC. 7. Section 3283 is added to the Health and Safety Code, to read:

3283. Each health care provider who treats a person for active tuberculosis disease shall examine, or cause to be examined, all household contacts or shall refer them to the local health officer for examination. Each health care provider shall promptly notify the health officer of the referral. When required by the health officer, nonhousehold contacts and household contacts not examined by a health care provider shall submit to examination by the health officer or designee. If any abnormality consistent with the symptoms of tuberculosis disease is found, steps satisfactory to the health officer shall be taken to refer the person promptly to a health care provider for further investigation, and if necessary, treatment. Contacts shall be reexamined at times and in a manner as the health officer may

require. When requested by the health officer, a health care provider shall report the results of any examination related to tuberculosis of a contact.

SEC. 8. Section 3284 is added to the Health and Safety Code, to read:

3284. (a) Within the territory under his or her jurisdiction, each health officer may order examinations for tuberculosis infection for the purposes of directing preventive measures for persons in the territory, except those incarcerated in a state correctional institution, for whom the health officer has reasonable grounds to determine are at heightened risk of tuberculosis exposure.

(b) An order for examination pursuant to this section shall be in writing and shall include other terms and conditions as may be necessary to protect the public health.

SEC. 9. Section 3285 of the Health and Safety Code is repealed.

SEC. 10. Section 3285 is added to the Health and Safety Code, to read:

3285. Each health officer is hereby directed to use every available means to ascertain the existence of, and immediately investigate all reported or suspected cases of active tuberculosis disease in the jurisdiction, and to ascertain the sources of those infections. In carrying out the investigations, each health officer shall follow applicable local rules and regulations and all general and special rules, regulations, and orders of the state department. If the health officer determines that the public health in general or the health of a particular person is endangered by exposure to a person who is known to have active tuberculosis disease, or to a person for whom there are reasonable grounds to believe has active tuberculosis disease, the health officer may issue any orders he or she deems necessary to protect the public health or the health of any other person, and may make application to a court for enforcement of the orders. The orders shall be in writing, and shall include the name of the person, the period of time during which the order shall remain effective, the location, payor source, and other terms and conditions as may be necessary to protect the public health. Upon issuing an order, a copy of the order shall be served upon the person named in the order. Upon the receipt of information that any order has been violated, the health officer shall advise the district attorney of the county in which the violation has occurred, in writing, and shall submit to the district attorney the information in his or her possession relating to the subject matter of the order, and of the violation or violations thereof.

Any and all orders authorized under this chapter shall be made by the health officer, and his or her authority to make the orders may be delegated to the person in charge of medical treatment of inmates in penal institutions within the territory, or pursuant to Section 7. The health officer shall not make any orders incorporating by reference any other rules or regulations.

The orders may include, but shall not be limited to, any of the

following:

(a) An order authorizing the removal to, or admission into, a health facility or other treatment facility for appropriate examination for tuberculosis of a person who is known to have active tuberculosis, or a person for whom there are reasonable grounds to believe that the person has active tuberculosis and who is unable or unwilling voluntarily to submit to the examination by a physician or by the health officer. Any person whom the health officer determines should have an examination for tuberculosis may have the examination made by a physician of his or her own choice who is licensed to practice medicine under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code under terms and conditions as the health officer shall determine on reasonable grounds to be necessary to protect the public health.

(b) An order requiring a person who has active tuberculosis to complete an appropriate prescribed course of medication for tuberculosis and, if necessary, to follow required contagion precautions for tuberculosis. This subdivision does not allow the forceable or involuntary administration of medication. If an order to complete therapy is not complied with, the health officer may issue orders pursuant to subdivision (d), (e), (f), or (g).

(c) An order requiring a person who has active tuberculosis and who is unable or unwilling otherwise to complete an appropriate prescribed course of medication for tuberculosis to follow a course of directly observed therapy. This subdivision does not allow forceable or involuntary administration of medication. If an order to follow a course of directly observed therapy is not complied with, the health officer may issue orders pursuant to subdivision (d), (e), (f), or (g).

(d) An order for the removal to, or admission into, a health facility or other treatment facility of a person if both of the following occur:

(1) The person has infectious tuberculosis, or who presents a substantial likelihood of having infectious tuberculosis, based upon proven epidemiologic evidence, clinical evidence, X-ray readings, or tuberculosis laboratory test results.

(2) The health officer finds, based on recognized infection control principles, that there is a substantial likelihood the person may transmit tuberculosis to others because of his or her inadequate separation from others.

(e) An order for the removal to, or admission into, a health facility or other treatment facility of a person if both of the following occur:

(1) The person has active tuberculosis disease, or has been reported to the health officer as having active tuberculosis disease with no subsequent report to the health officer of the completion of an appropriate prescribed course of medication for tuberculosis.

(2) There is a substantial likelihood, based on the person's past or present behavior, that he or she cannot be relied upon to participate in or complete an appropriate prescribed course of medication for tuberculosis and, if necessary, follow required contagion precautions for tuberculosis. The behavior may include, but is not limited to,

refusal or failure to take medication for tuberculosis, refusal or failure to keep appointments or treatment for tuberculosis, refusal or failure to complete the treatment for tuberculosis, or disregard for contagion precautions for tuberculosis.

(f) An order for exclusion from attendance at the workplace for persons with infectious tuberculosis. The order may, also, exclude the person from any place when the health officer determines that the place cannot be maintained in a manner adequate to protect others against the spread of tuberculosis.

(g) An order for isolation of persons with infectious tuberculosis to their place of residence until the health officer has determined that they no longer have infectious tuberculosis.

(h) This section shall apply to all persons except those incarcerated in a state correctional institution.

(i) This section shall not be construed to require a private hospital or other private treatment facility to accept any patient without a payment source, including county responsibilities under Section 17000 of the Welfare and Institutions Code, except as required by Sections 1317 et seq. or by federal law.

SEC. 11. Section 3285.1 is added to the Health and Safety Code, to read:

3285.1. The health officer may remove to, or detain in, a hospital or other place for examination or treatment a person who is the subject of an order of removal or detention issued pursuant to Section 3285 without a prior court order except that when a person detained pursuant to Section 3285 has requested release, the health officer shall make an application for a court order authorizing the detention within 72 hours after the request or, if the 72-hour period ends on a Saturday, Sunday, or legal holiday, by the end of the first business day following the Saturday, Sunday, or legal holiday, which application shall include a request for an expedited hearing. After the request for release, detention shall not continue for more than five business days in the absence of a court order authorizing detention. However, in no event shall any person be detained for more than 60 days without a court order authorizing the detention. The health officer shall seek further court review of the detention within 90 days following the initial court order authorizing detention and thereafter within 90 days of each subsequent court review. In any court proceeding to enforce a health officer's order for the removal or detention of a person, the health officer shall prove the particularized circumstances constituting the necessity for the detention by clear and convincing evidence. Any person who is subject to a detention order shall have the right to be represented by counsel and upon the request of the person, counsel shall be provided.

SEC. 12. Section 3285.2 is added to the Health and Safety Code, to read:

3285.2. (a) An order of a health officer pursuant to Section 3285 shall set forth all of the following:

(1) The legal authority under which the order is issued, including the particular sections of state law or regulations.

(2) An individualized assessment of the person's circumstances or behavior constituting the basis for the issuance of the order.

(3) The less restrictive treatment alternatives that were attempted and were unsuccessful, or the less restrictive treatment alternatives that were considered and rejected, and the reasons the alternatives were rejected.

(b) An order for the removal and detention of a person shall do all of the following:

(1) Include the purpose of the detention.

(2) Advise the person being detained that he or she has the right to request release from detention by contacting a person designate on the health officer's order at the telephone number stated on the order and that the detention shall not continue for more than five business days after the request, in the absence of a court order authorizing the detentions.

(3) Advise the person being detained that, whether or not he or she requests release from detention, the health officer is required to obtain a court order authorizing detention within 60 days following the commencement of detention and thereafter shall further seek court review of the detention within 90 days of the court order and within 90 days of each subsequent court review.

(4) Advise the person being detained that he or she has the right to arrange to be represented by counsel or to have counsel provided, and that if he or she chooses to have counsel provided, the counsel will be notified that the person has requested legal representation.

(5) Be accompanied by a separate notice that shall include, but not be limited to, all of the following additional information:

(A) That the person being detained has the right to request release from detention by contacting a person designated on the health officer's order at a telephone number stated on the order, and that the detention shall not continue for more than five business days after the request in the absence of a court order authorizing the detention.

(B) That he or she has the right to arrange to be advised and represented by counsel or to have counsel provided, and that if he or she chooses to have counsel provided, the counsel will be notified that the person has requested legal representation.

(C) That he or she may supply the addresses or telephone numbers of friends or relatives to receive notification of the person's detention, and that the health officer shall, at the patient's request, provide notice to a reasonable number of those people that the person is being detained.

SEC. 13. Section 3285.3 is added to the Health and Safety Code, to read:

3285.3. Notwithstanding any inconsistent provision of Section 3285, 3285.1 or 3285.2, all of the following shall apply:

(a) A person who is detained solely pursuant to subdivision (a) of

Section 3285 shall not continue to be detained beyond the minimum period of time required, with the exercise of all due diligence, to make a medical determination of whether a person who is suspected of having tuberculosis, has active tuberculosis or whether a person who has active tuberculosis has infectious tuberculosis. Further detention of the person shall be authorized only upon the issuance of a health officer's order pursuant to subdivision (d) or (e) of Section 3285.

(b) A person who is detained solely for the reasons described in subdivision (d) of Section 3285 shall not continue to be detained after he or she ceases to be infectious or after the health officer ascertains that changed circumstances exist that permit him or her to be adequately separated from others so as to prevent transmission of tuberculosis after his or her release from detention.

(c) A person who is detained for the reasons described in subdivision (f) of Section 3285 shall not continue to be detained after he or she has completed an appropriate prescribed course of medication.

SEC. 14. Section 3285.4 is added to the Health and Safety Code, to read:

3285.4. For the purposes of Sections 3285, 3285.1, and 3285.2, all of the following shall apply:

(a) If necessary, language interpreters and persons skilled in communicating with vision and hearing impaired individuals shall be provided in accordance with applicable law.

(b) Nothing in those sections shall be construed to permit or require the forcible administration of any medication without a prior court order.

(c) Any and all orders authorized under those sections shall be made by the health officer and his or her authority to make the orders shall be delegated only pursuant to Section 7. The health officer shall not make any orders incorporating by reference any other rules or regulations.

SEC. 15. Section 3351 of the Health and Safety Code is amended to read:

3351. Inasmuch as the orders provided for by Section 3285 are for the protection of the public health, any person who, after service upon him or her of an order of a health officer as provided in Section 3285 violates or fails to comply with the order, is guilty of a misdemeanor. Upon conviction thereof, in addition to any and all other penalties that may be imposed by law upon the conviction, the person may be ordered by the court confined until the order of the health officer shall have been fully complied with or terminated by the health officer, but not exceeding one year from the date of passing judgment upon the conviction, further, the court, upon suitable assurances that the order of the health officer will be complied with, may place any person convicted of a violation of the order of the health officer upon probation for a period not to exceed two years, upon condition that the order of the health officer be fully

complied with, further, upon any subsequent violation of the order of the health officer, the probation shall be terminated and confinement as provided for in this section shall be ordered by the court.

SEC. 16. Section 3355 of the Health and Safety Code is amended to read:

3355. The district attorney of the county in which a violation of Sections 3285 and 3351 may be committed, shall prosecute all such violations and, upon the request of a health officer, shall prosecute, as provided in Section 3351, violations of any order of a health officer made and served as provided in Section 3285 or Section 3002.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Moreover, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Also, notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution. Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 677

An act to amend Section 7480 of the Government Code, and to amend Sections 16575, 16576, 16576.5, and 16577 of the Welfare and Institutions Code, relating to support.

[Approved by Governor October 1, 1994. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 7480 of the Government Code is amended to read:

7480. Nothing in this chapter prohibits any of the following:

(a) The dissemination of any financial information which is not

identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings and loan association in writing that a crime report has been filed which involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings and loan association in this state, the police or sheriff's department or district attorney may request a bank, credit union, or savings and loan association to furnish, and a bank, credit union, or savings and loan association shall supply, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to and up to 30 days following the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid which created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings and loan association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(c) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Inheritance Tax Law (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county welfare department when investigating welfare fraud, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(d) The examination by, or disclosure to, any supervisory agency of financial records which relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes which grant authority

to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Superintendent of Banks by reference to Division 1 (commencing with Section 99), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.

(2) With respect to the Department of Savings and Loan by reference to Division 2 (commencing with Section 5000) of the Financial Code.

(3) With respect to the Corporations Commissioner by reference to Division 5 (commencing with Section 14000) and Division 7 (commencing with Section 18000) of the Financial Code.

(4) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(5) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) The disclosure to the Franchise Tax Board of (1) the amount of any security interest a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), 11 (commencing with Section 23001), or 18 (commencing with Section 38001) of the Revenue and Taxation Code.

(f) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 40153, 40155, 41123.5, 43444.2, and 44144 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Parts 1 (commencing with Section 6001), 2 (commencing with Section 7301), 3 (commencing with Section 8601), 13 (commencing with Section 30001), 14 (commencing with Section 32001), and 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(g) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(h) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information

concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(j) Upon receipt of a written request from a district attorney referring to a support order pursuant to Section 11475.1 of the Welfare and Institutions Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the district attorney shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

The district attorney may request information pursuant to this subdivision only when the district attorney has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

(iii) A bank statement.

(iv) A check.

(v) A bank passbook.

(vi) A deposit slip.

(vii) A copy of a federal or state income tax return.

(viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

Information obtained by a district attorney pursuant to this subdivision shall be used only for purposes that are directly connected within the administration of the duties of the district attorney pursuant to Section 11475.1 of the Welfare and Institutions Code.

SEC. 2. Section 16575 of the Welfare and Institutions Code is amended to read:

16575. (a) The Legislature finds and declares that there is no single statewide data base containing statistical data regarding child support orders.

(b) The Statewide Automated Child Support System shall provide a single statewide registry of all child support orders in California. The registry shall be implemented when the Statewide Automated Child Support System is operational.

(c) The department shall conduct a study examining the feasibility of alternative models of a single statewide registry of all California child support orders through the Statewide Automated Child Support System.

(d) The department shall report the results of the study required by subdivision (c) to the appropriate committees of the Legislature by June 30, 1994.

SEC. 3. Section 16576 of the Welfare and Institutions Code is amended to read:

16576. (a) Within 90 days after the Statewide Automated Child Support System is fully operational, the department shall inform each county clerk of that fact. Each county shall thereafter forward a certified copy of the Child Support Order and Data Form, the Order of Child Support Arrears, as appropriate, to the statewide registry at the Statewide Automated Child Support System.

(b) The department shall develop an implementation plan for the Child Support Registry. The plan shall be developed in consultation with title companies, county clerks, district attorneys, and the appropriate policy committees of the Legislature.

(c) Once the Statewide Automated Child Support System is fully operational, the State Department of Social Services shall maintain a system for recording all Child Support Order and Data Forms and Orders of Child Support Arrears received from the county court clerks.

(d) The State Department of Social Services shall further provide access to the information obtained from both the Child Support Order and Data Forms and Orders of Child Support Arrears to the

Judicial Council, representatives of the Executive Branch, and Legislature for statistical analysis and review.

(e) Any information maintained by the Statewide Automated Child Support System from the Child Support Order and Data Forms and Orders of Child Support Arrears forms shall be provided to county district attorneys and others as provided by law.

SEC. 4. Section 16576.5 of the Welfare and Institutions Code is amended to read:

16576.5. The State Department of Social Services shall contract with the Judicial Council to prepare and adopt the Child Support Order and Data Form, which shall contain the following information:

(a) Full name, last known address, telephone number, social security number, and birth date of both parties.

(b) The date on which the child support order will terminate (e.g. the date the youngest child turns 18 or 19 if still in high school).

(c) A clear statement of the amount of child support to be paid for each child.

(d) If the order is a modification of a prior child support order, a clear statement of the amount of the prior order for each child and the amount of the modified order for each child.

(e) Any other information the Judicial Council finds appropriate for their statistical review. The Judicial Council shall complete the preparation of the Child Support Order and Data Form no later than January 1, 1995.

SEC. 5. Section 16577 of the Welfare and Institutions Code is amended to read:

16577. The State Department of Social Services shall contract with the Judicial Council to prepare and adopt the Order of Child Support Arrears Form which shall contain on its face the following information:

(a) Full name, last known address, telephone number, social security number, and birth date of both parties.

(b) Date on which court order on arrears will terminate, if known.

(c) A clear statement of the amount of the child support arrearage.

(d) If the order is a modification of a prior child support order, a clear statement of the amount of the prior order, and the amount of the modified order.

(e) Any other information the Judicial Council finds appropriate for their statistical review.

The Judicial Council shall complete the preparation of the Order of Child Support Arrears Form no later than January 1, 1995.

CHAPTER 678

An act to amend Section 2034 of the Code of Civil Procedure, and to amend Section 68092.5 of the Government Code, relating to expert witnesses.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 2034 of the Code of Civil Procedure, as amended by Chapter 3 of the Statutes of 1993, is amended to read:

2034. (a) After the setting of the initial trial date for the action, any party may obtain discovery by demanding that all parties simultaneously exchange information concerning each other's expert trial witnesses to the following extent:

(1) Any party may demand a mutual and simultaneous exchange by all parties of a list containing the name and address of any natural person, including one who is a party, whose oral or deposition testimony in the form of an expert opinion any party expects to offer in evidence at the trial.

(2) If any expert designated by a party under paragraph (1) is a party or an employee of a party, or has been retained by a party for the purpose of forming and expressing an opinion in anticipation of the litigation or in preparation for the trial of the action, the designation of that witness shall include or be accompanied by an expert witness declaration under paragraph (2) of subdivision (f).

(3) Any party may also include a demand for the mutual and simultaneous production for inspection and copying of all discoverable reports and writings, if any, made by any expert described in paragraph (2) in the course of preparing that expert's opinion.

This section does not apply to exchanges of lists of experts and valuation data in eminent domain proceedings under Chapter 7 (commencing with Section 1258.010) of Title 7 of Part 3.

(b) Any party may make a demand for an exchange of information concerning expert trial witnesses without leave of court. A party shall make this demand no later than the 10th day after the initial trial date has been set, or 70 days before that trial date, whichever is closer to the trial date.

(c) A demand for an exchange of information concerning expert trial witnesses shall be in writing and shall identify, below the title of the case, the party making the demand. The demand shall state that it is being made under this section.

The demand shall specify the date for the exchange of lists of expert trial witnesses, expert witness declarations, and any demanded production of writings. The specified date of exchange shall be 50 days before the initial trial date, or 20 days after service

of the demand, whichever is closer to the trial date, unless the court, on motion and a showing of good cause, orders an earlier or later date of exchange.

(d) The party demanding an exchange of information concerning expert trial witnesses shall serve the demand on all parties who have appeared in the action.

(e) A party who has been served with a demand to exchange information concerning expert trial witnesses may promptly move for a protective order. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party from unwarranted annoyance, embarrassment, oppression, or undue burden and expense. The protective order may include, but is not limited to, one or more of the following directions:

(1) That the demand be quashed because it was not timely served.

(2) That the date of exchange be earlier or later than that specified in the demand.

(3) That the exchange be made only on specified terms and conditions.

(4) That the production and exchange of any reports and writings of experts be made at a different place or at a different time than specified in the demand.

(5) That some or all of the parties be divided into sides on the basis of their identity of interest in the issues in the action, and that the designation of any experts as described in paragraph (2) of subdivision (a) be made by any side so created.

(6) That a party or a side reduce the list of employed or retained experts designated by that party or side under paragraph (2) of subdivision (a).

If the motion for a protective order is denied in whole or in part, the court may order that the parties against whom the motion is brought, provide or permit the discovery against which the protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) All parties who have appeared in the action shall exchange information concerning expert witnesses in writing on or before the date of exchange specified in the demand. The exchange of information may occur at a meeting of the attorneys for the parties involved or by a mailing on or before the date of exchange.

(1) The exchange of expert witness information shall include either of the following:

(A) A list setting forth the name and address of any person whose expert opinion that party expects to offer in evidence at the trial.

(B) A statement that the party does not presently intend to offer the testimony of any expert witness.

(2) If any witness on the list is an expert as described in paragraph (2) of subdivision (a), the exchange shall also include or be accompanied by an expert witness declaration signed only by the attorney for the party designating the expert, or by that party if that party has no attorney. This declaration shall be under penalty of perjury and shall contain:

(A) A brief narrative statement of the qualifications of each expert.

(B) A brief narrative statement of the general substance of the testimony that the expert is expected to give.

(C) A representation that the expert has agreed to testify at the trial.

(D) A representation that the expert will be sufficiently familiar with the pending action to submit to a meaningful oral deposition concerning the specific testimony, including any opinion and its basis, that the expert is expected to give at trial.

(E) A statement of the expert's hourly and daily fee for providing deposition testimony and for consulting with the retaining attorney.

(g) If a demand for an exchange of information concerning expert trial witnesses includes a demand for production of reports and writings as described in paragraph (3) of subdivision (a), all parties shall produce and exchange, at the place and on the date specified in the demand, all discoverable reports and writings, if any, made by any designated expert described in paragraph (2) of subdivision (a).

(h) Within 20 days after the exchange described in subdivision (f), any party who engaged in the exchange may submit a supplemental expert witness list containing the name and address of any experts who will express an opinion on a subject to be covered by an expert designated by an adverse party to the exchange, if the party supplementing an expert witness list has not previously retained an expert to testify on that subject. This supplemental list shall be accompanied by an expert witness declaration under paragraph (2) of subdivision (f) concerning those additional experts, and by all discoverable reports and writings, if any, made by those additional experts. The party shall also make those experts available immediately for a deposition under subdivision (i), which deposition may be taken even though the time limit for discovery under Section 2024 has expired.

(i) On receipt of an expert witness list from a party, any other party may take the deposition of any person on the list. The procedures for taking oral and written depositions set forth in Sections 2025, 2026, 2027, and 2028 apply to a deposition of a listed trial expert witness except as follows:

(1) The deposition of any expert described in paragraph (2) of subdivision (a) shall be taken at a place that is within 75 miles of the courthouse where the action is pending. However, on motion for a protective order by the party designating an expert witness, and on

a showing of exceptional hardship, the court may order that the deposition be taken at a more distant place from the courthouse.

(2) A party desiring to depose any expert witness, other than a party or employee of a party, who is either (A) an expert described in paragraph (2) of subdivision (a) except one who is a party or an employee of a party, (B) a treating physician and surgeon or other treating health care practitioner who is to be asked to express an opinion during the deposition, or (C) an architect, professional engineer, or licensed land surveyor, who was involved with the original project design or survey for which he or she is asked to express an opinion within his or her expertise and relevant to the action or proceeding, shall pay the expert's reasonable and customary hourly or daily fee for any time spent at the deposition from the time noticed in the deposition subpoena or from the time of the arrival of the expert witness should that time be later than the time noticed in the deposition subpoena, until the time the expert witness is dismissed from the deposition, whether or not the expert is actually deposed by any party attending the deposition. If any counsel representing the expert or a nonnoticing party is late to the deposition, the expert's reasonable and customary hourly or daily fee for the time period determined from the time noticed in the deposition subpoena until the counsel's late arrival, shall be paid by that tardy counsel. However, the hourly or daily fee shall not exceed the fee charged the party who retained the expert except where the expert donated his or her services to a charitable or other nonprofit organization. A daily fee shall only be charged for a full day of attendance at a deposition or where the expert was required by the deposing party to be available for a full day and the expert necessarily had to forego all business he or she would have otherwise conducted that day but for the request that he or she be available all day for the scheduled deposition. In a worker's compensation case arising under Division 4 (commencing with Section 3201) or Division 4.5 (commencing with Section 6100) of the Labor Code, a party desiring to depose any expert on another party's expert witness list shall pay this fee.

The party taking the deposition shall either accompany the service of the deposition notice with a tender of the expert's fee based on the anticipated length of the deposition or tender that fee at the commencement of the deposition. The expert's fee shall be delivered to the attorney for the party designating the expert. If the deposition of the expert takes longer than anticipated, the party giving notice of the deposition shall pay the balance of the expert's fee within five days of receipt of an itemized statement from the expert. The party designating the expert is responsible for any fee charged by the expert for preparing for the deposition and for traveling to the place of the deposition, as well as for any travel expenses of the expert.

(3) The service of a proper deposition notice accompanied by the tender of the expert witness fee described in paragraph (2) is effective to require the party employing or retaining the expert to

produce the expert for the deposition. If the party noticing the deposition fails to tender the expert's fee under paragraph (2), the expert shall not be deposed at that time unless the parties stipulate otherwise.

(4) If a party desiring to take the deposition of an expert witness under this subdivision deems that the hourly or daily fee of that expert for providing deposition testimony is unreasonable, that party may move for an order setting the compensation of that expert. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall also be given to the expert. In any such attempt at an informal resolution, either the party or the expert shall provide the other with (A) proof of the ordinary and customary fee actually charged and received by that expert for similar services provided outside the subject litigation, (B) the total number of times the presently demanded fee has ever been charged and received by that expert, and (C) the frequency and regularity with which the presently demanded fee has been charged and received by that expert within the two-year period preceding the hearing on the motion.

In addition to any other facts or evidence, the expert or the party designating the expert shall provide, and the court's determination as to the reasonableness of the fee shall be based upon (A) proof of the ordinary and customary fee actually charged and received by that expert for similar services provided outside the subject litigation, (B) the total number of times the presently demanded fee has ever been charged and received by that expert, and (C) the frequency and regularity with which the presently demanded fee has been charged and received by that expert within the two-year period preceding the hearing on the motion. Provisions (B) and (C) shall apply to actions filed after January 1, 1994. The court may also consider the ordinary and customary fees charged by similar experts for similar services within the relevant community and any other factors the court deems necessary or appropriate to make its determination.

Upon a determination that the fee demanded by that expert is unreasonable, and based upon the evidence and factors considered, the court shall set the fee of the expert providing testimony.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to set the expert witness fee, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) Except as provided in subdivisions (k), (*l*), and (m), on objection of any party who has made a complete and timely compliance with subdivision (f), the trial court shall exclude from evidence the expert opinion of any witness that is offered by any party who has unreasonably failed to do any of the following:

(1) List that witness as an expert under subdivision (f).

(2) Submit an expert witness declaration.

(3) Produce reports and writings of expert witnesses under subdivision (g).

(4) Make that expert available for a deposition under subdivision (i).

(k) On motion of any party who has engaged in a timely exchange of expert witness information, the court may grant leave to (1) augment that party's expert witness list and declaration by adding the name and address of any expert witness whom that party has subsequently retained, or (2) amend that party's expert witness declaration with respect to the general substance of the testimony that an expert previously designated is expected to give. This motion shall be made at a sufficient time in advance of the time limit for the completion of discovery under Section 2024 to permit the deposition of any expert to whom the motion relates to be taken within that time limit. However, under exceptional circumstances, the court may permit the motion to be made at a later time. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The demand, and all expert witness lists and declarations exchanged in response to it, shall be lodged with the court when their contents become relevant to an issue in any pending matter in the action. The court shall grant leave to augment or amend an expert witness list or declaration only after taking into account the extent to which the opposing party has relied on the list of expert witnesses, and after determining that any party opposing the motion will not be prejudiced in maintaining that party's action or defense on the merits, and that the moving party either (1) would not in the exercise of reasonable diligence have determined to call that expert witness or have decided to offer the different or additional testimony of that expert witness, or (2) failed to determine to call that expert witness, or to offer the different or additional testimony of that expert witness as a result of mistake, inadvertence, surprise, or excusable neglect, provided that the moving party (1) has sought leave to augment or amend promptly after deciding to call the expert witness or to offer the different or additional testimony, and (2) has promptly thereafter served a copy of the proposed expert witness information concerning the expert or the testimony described in subdivision (f) on all other parties who have appeared in the action. Leave shall be conditioned on the moving party making the expert available immediately for a deposition under subdivision (i), and on such other terms as may be just, including, but not limited to, leave to any party opposing the motion to designate additional expert witnesses or to elicit additional opinions from those previously designated, a continuance of the trial for a reasonable period of time, and the awarding of costs and litigation expenses to any party opposing the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or

opposes a motion to augment or amend expert witness information, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances made the imposition of the sanction unjust.

(*l*) On motion of any party who has failed to submit expert witness information on the date specified in a demand for that exchange, the court may grant leave to submit that information on a later date. This motion shall be made a sufficient time in advance of the time limit for the completion of discovery under Section 2024 to permit the deposition of any expert to whom the motion relates to be taken within that time limit. However, under exceptional circumstances, the court may permit the motion to be made at a later time. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court shall grant leave to submit tardy expert witness information only after taking into account the extent to which the opposing party has relied on the absence of a list of expert witnesses, and determining that any party opposing the motion will not be prejudiced in maintaining that party's action or defense on the merits, and that the moving party (1) failed to submit that information as the result of mistake, inadvertence, surprise, or excusable neglect, (2) sought that leave promptly after learning of the mistake, inadvertence, surprise, or excusable neglect, and (3) has promptly thereafter served a copy of the proposed expert witness information described in subdivision (f) on all other parties who have appeared in the action. This order shall be conditioned on the moving party making that expert available immediately for a deposition under subdivision (i), and on such other terms as may be just, including, but not limited to, leave to any party opposing the motion to designate additional expert witnesses or to elicit additional opinions from those previously designated, a continuance of the trial for a reasonable period of time, and the awarding of costs and litigation expenses to any party opposing the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to submit tardy expert witness information, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(m) A party may call as a witness at trial an expert not previously designated by that party if: (1) that expert has been designated by another party and has thereafter been deposed under subdivision (i), or (2) that expert is called as a witness to impeach the testimony of an expert witness offered by any other party at the trial. This impeachment may include testimony to the falsity or nonexistence of any fact used as the foundation for any opinion by any other party's expert witness, but may not include testimony that contradicts the opinion.

(n) The demand for an exchange of information concerning expert trial witnesses, and any expert witness lists and declarations exchanged shall not be filed with the court. The party demanding the exchange shall retain both the original of the demand, with the original proof of service affixed, and the original of all expert witness lists and declarations exchanged in response to the demand until six months after final disposition of the action. At that time, all originals may be destroyed unless the court, on motion of any party and for good cause shown, orders that the originals be preserved for a longer period.

SEC. 2. Section 68092.5 of the Government Code is amended to read:

68092.5. (a) A party requiring testimony before any court, tribunal, or arbiter in any civil action or proceeding from any expert witness, other than a party or employee of a party, who is either, (1) an expert described in paragraph (2) of subdivision (a) of Section 2034 of the Code of Civil Procedure, (2) a treating physician and surgeon or other treating health care practitioner who is to be asked to express an opinion during the action or proceeding, or (3) an architect, professional engineer, or licensed land surveyor who was involved with the original project design or survey for which he or she is asked to express an opinion within his or her expertise and relevant to the action or proceeding, shall pay the reasonable and customary hourly or daily fee for the actual time consumed in the examination of that witness by any party attending the action or proceeding. The hourly or daily fee shall not exceed the fee charged the party who retained the expert except where the expert donated his or her services to a charitable or other nonprofit organization. A daily fee shall only be charged for a full day of attendance at a deposition or where the expert was required by the deposing party to be available for a full day and the expert necessarily had to forego all business he or she would have otherwise conducted that day but for the request that he or she be available all day for the scheduled deposition.

The party requiring the attendance shall either accompany the service of the subpoena or notice with a tender of the expert's fee based on the anticipated length of time the expert is required to remain at such place pursuant to the notice or subpoena or tender that fee at the required time of appearance. The expert's fee shall be delivered to the attorney for the party designating the expert. If the appearance of the expert takes longer than anticipated, the party serving the subpoena or notice shall pay the balance of the expert's fee within five days of receipt of an itemized statement from the expert. The party designating the expert is responsible for any fee charged by the expert for preparing for the testimony and for traveling to the place of the civil action or proceeding, as well as for any travel expenses of the expert, unless otherwise determined by the court.

(b) The service of a proper subpoena or notice accompanied by

the tender of the expert witness fee described in subdivision (a) is effective to require the party employing or retaining the expert to produce the expert for testimony. If the party serving the notice or subpoena fails to tender the expert's fee under subdivision (a), the expert shall not be required to appear at that time unless the parties stipulate otherwise.

(c) If a party requiring the appearance by subpoena or notice of another party's expert witness under this subdivision deems that the hourly or daily fee of that expert for providing testimony is unreasonable, that party may move for an order setting the compensation of that expert. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall also be given to the expert.

In any such attempt at an informal resolution, either the party or the expert shall provide the other with (A) proof of the ordinary and customary fee actually charged and received by that expert for similar services provided outside the subject litigation, (B) the total number of times the presently demanded fee has ever been charged and received by that expert, and (C) the frequency and regularity with which the presently demanded fee has been charged and received by that expert within the two-year period preceding the hearing on the motion. Provisions (B) and (C) shall apply to actions filed after January 1, 1994.

In addition to any other facts or evidence, the expert or the party designating the expert shall provide, and the court's determination as to the reasonableness of the fee shall be based upon, (1) proof of the ordinary and customary fee actually charged and received by that expert for similar services provided outside the subject litigation, (2) the total number of times the presently demanded fee has ever been charged and received by that expert, and (3) the frequency and regularity with which the presently demanded and any other fee has been charged and received by that expert within the two-year period preceding the hearing on the motion. The court may also consider (4) the ordinary and customary fees charged by similar experts for similar services within the relevant community, and (5) any other factors the court deems necessary or appropriate to make its determination.

Upon a determination that the fee demanded by that expert is unreasonable, and based upon the evidence and factors considered, the court shall set the fee of the expert providing testimony.

(d) In the event the proceeding at which the expert witness has been notified his or her attendance is required is continued or canceled in advance of the time for which it is scheduled, such witness shall be notified of the continuance or cancellation by the party requiring his or her attendance by the quickest and most reliable means of giving notice under the circumstances. In the event such party fails to give notice as required by this subdivision, then the expert witness shall be entitled to receive the compensation

specified in subdivision (a) of this section, notwithstanding his or her failure to give any testimony.

(e) An express contract entered into between a person and the party requesting or requiring the person to testify, relating to compensation, shall be enforceable and shall prevail over the provisions of this section.

(f) The deposition of an expert witness is governed by Section 2034 of the Code of Civil Procedure.

CHAPTER 679

An act to amend Sections 32761.5, 32811, 33291, 35221, and 62707 of, and to add Section 32814 to, the Food and Agricultural Code, relating to food and agriculture.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 32761.5 of the Food and Agricultural Code is amended to read:

32761.5. The director shall test milk and milk products for the presence of drug residues. The director may adopt, by regulation, official drug residue testing methods and procedures for industry testing of raw milk from all bulk raw milk pickup tankers, prior to processing, for the presence of beta-lactam drugs and for other drug residues, as determined by the director. The director shall adopt, by regulation, official drug residue testing methods used for the detection of drug residue in farm bulk milk tanks, bulk milk pickup tankers, and milk and milk products in processing plants, wholesale outlets, and retail outlets.

SEC. 1.3. Section 32811 of the Food and Agricultural Code is amended to read:

32811. Any license or permit that is issued pursuant to this division, may be suspended or revoked by the director, after a hearing before the director if, within 30 days after written notice, the licensee or permittee fails to comply with the laws and regulations under which the license or permit was granted, fails or refuses to complete a drug residue prevention program, or has been found to have produced milk in violation of the drug residue provisions of this chapter on three or more occasions within a 12-month period. The licensee or permittee shall have written notice of the time and place of the hearing and the charges that are made against him or her.

SEC. 1.5. Section 32814 is added to the Food and Agricultural Code, to read:

32814. (a) In addition to any other penalty or fine prescribed by law, a dairy producer found to have produced milk in violation of the

drug residue provisions of this chapter shall be subject to a civil penalty as follows:

(1) For the first drug residue violation in a 12-month period that caused the condemnation of a bulk raw milk pickup tanker load, the dairy producer responsible for the condemnation shall be subject to a penalty of two hundred fifty dollars ($250), including actual direct inspection costs related to the violation.

(2) For the second or subsequent drug residue violation in a 12-month period that caused the condemnation of a bulk raw milk pickup tanker load, the dairy producer responsible for the condemnation shall be subject to a penalty not to exceed five hundred dollars ($500), including actual direct inspection costs related to the violation.

(b) In addition to the penalties specified in subdivision (a), a dairy producer found to have produced milk in violation of the drug residue provisions of this chapter shall complete a drug residue prevention program, as prescribed by the director, within 30 days after receipt of written notice.

(c) In addition to the penalties specified in subdivisions (a) and (b), a dairy producer whose drug residue contaminated milk is responsible for the condemnation of a bulk raw milk pickup tanker load shall be civilly liable to all other producers with milk in the same bulk raw milk pickup tanker load for the full value of their portion of the contaminated milk load.

SEC. 1.7. Section 33291 of the Food and Agricultural Code is amended to read:

33291. Every person that is engaged in the production of market milk outside the jurisdiction of an approved milk inspection service and every person engaged in the processing, manufacture, or distribution of milk, milk products, or products resembling milk products or in the processing, manufacture, or freezing of ice cream, ice milk, sherbet, or any similar frozen product, shall pay a cost related inspection fee to the director.

SEC. 2. Section 35221 of the Food and Agricultural Code is amended to read:

35221. (a) Every person that is engaged in the business of dealing in, receiving, manufacturing, freezing, or processing ice cream, ice milk, sherbet, or any similar frozen product, of manufacturing, freezing, or processing imitation ice cream, imitation ice milk, or any similar frozen product, or of processing any other dairy product for which a license is required, shall pay the following fees:

(1) For a license for all frozen milk products and all imitation frozen milk products, one hundred dollars ($100) for the calendar year for which the license is issued. The fee for the renewal of this license is one hundred dollars ($100), plus one dollar ($1) for each additional 10,000 gallons or fraction of 10,000 gallons over and above 20,000 gallons that were manufactured during the preceding year, ending December 31.

(2) For a semifrozen (soft-serve) milk products plant license issued to persons making application under Section 33704, one hundred fifty dollars ($150) for the calendar year for which the semifrozen (soft-serve) milk products plant license is issued. The fee for the renewal of this license is one hundred fifty dollars ($150).

(3) For a limited packaging permit issued to a licensed semifrozen (soft-serve) milk products plant making application under subdivision (b) of Section 33704, three hundred dollars ($300) for issuance of the initial permit. The fee for the annual renewal of this permit is one hundred fifty dollars ($150).

(4) For a license for any other dairy product for which a license is required, one hundred dollars ($100) for the calendar year for which the license is issued. The fee for the renewal of any such license is one hundred dollars ($100), plus one dollar ($1) for each 100,000 pounds, or part of 100,000 pounds over and above the first 100,000 pounds, of milk fat that was purchased or received during the preceding year, ending December 31.

(5) For a person, except a hospital or sanitarium, that is engaged in the business of manufacturing any diabetic or dietetic frozen milk product or mix, one hundred dollars ($100) for the calendar year for which a diabetic or dietetic frozen milk products license is issued. The fee for the renewal of this license is one hundred dollars ($100).

(b) The license fees required by this section shall be prorated on a quarterly basis for any licensee that commences operations after the first quarter in any calendar year, regardless of whether or not the milk products plant was licensed during the preceding calendar year.

SEC. 3. Section 62707 of the Food and Agricultural Code is amended to read:

62707. The formulation committee shall make recommendations to the director for inclusion in the pooling plan, and the director shall include in the pooling plan, all of the following:

(a) The establishment of one or more pools throughout the state.

(b) (1) The base period to be used in determining the production and class 1 usage bases of each producer directly affected by the pooling plan. The base period shall, at the producer's option, be his or her fluid milk production and usage in the pool area during the calendar year 1967 on an average daily basis or his or her production and usage in the pool area during the last six months of 1966 on an average daily basis.

(2) As to a producer south and east of San Gorgonio Pass, his or her production base may, at his or her option, be four times his or her production in the months of December 1966, and January and February 1967.

(3) If a producer, during any base period, had a valid contract with a distributor, or as a member of a cooperative association had an allocation, which provided that the distributor or cooperative association was required to accept a larger amount of fluid milk from the producer than the producer actually produced during the

period, on proof satisfactory to the director of the contract or allocation, the producer may, at his or her option, have the amount specified in the contract or allocation established as his or her production base.

(c) The establishment of a class 1 usage for each producer, which shall be the amount of his or her production of fluid milk accounted for as class 1, and any fluid milk sold for use as class 1 to a United States military installation but which was not accounted for as class 1.

(d) The allocation to each producer within any pool of a pool quota, which, initially, shall be 110 percent of that producer's class 1 usage, as determined in subdivision (c).

(e) (1) The determination of new class 1 usage and the allocation of pool quota based thereon in a manner consistent with effectuating the purposes of this chapter.

(2) All producers who have not reached the equalization point shall share in the allocation of pool quota on the basis of a formula which gives substantial weight to each producer's production base, but which, at the same time, allocates a larger percentage to hardship cases and low class 1 usage producers.

(3) The allocations shall be made on the basis of each individual producer, with each cooperative association considered as a single producer. The cooperative associations of producers shall reassign any new quota to their own members subject to the provisions of Section 62710.

(4) Annually, within no more than four months after August 31 of each year, the pool quota shall be adjusted by each component to reflect any additional pool quota. Any increase in pool quota shall be determined from the amount of new class 1 and class 2 solids not fat usage which developed during the preceding annual period which exceeded the previous highest identical annual period since the 1988–89 fiscal year.

There shall be no downward adjustment of pool quota below the quota initially established pursuant to this chapter.

(f) The establishment of production bases and pool quotas for new fluid milk producers who wish to enter the pooling plan after the effective date of the plan. The recommendations of the committee shall be reasonably equitable to both the new producers and to participating producers and consistent with effectuating the purposes of this chapter.

(g) The transfer of production bases and pool quotas from one fluid milk producer to another under conditions so designed as to prevent abuses in the transfers and to avoid the development of excessive values for the bases and quotas.

(h) Notwithstanding Section 62711, any provision which may be necessary to encourage the availability of market milk for those usages for which class 1 and class 2 milk is mandatory.

(i) Any and all other matters necessary and desirable to effectuate the provisions of this chapter.

The recommendations of the formulation committee and the pooling plan may provide exceptions from the plan's general application for individual cases of hardship.

CHAPTER 680

An act to amend Section 23305.1 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 23305.1 of the Revenue and Taxation Code is amended to read:

23305.1. (a) A taxpayer may make application to the Franchise Tax Board for relief from the voidability provisions of Section 23304.1. To be relieved from voidability, the taxpayer shall do all of the following:

(1) Provide the Franchise Tax Board with an application for relief from contract voidability in a form and manner prescribed by the Franchise Tax Board.

(2) Include on the application the period for which relief is requested in accordance with subdivision (b).

(3) File any tax returns required to be filed under this part with the Franchise Tax Board, including returns for the period for which relief is requested.

(4) Pay any tax, additions to tax, penalties, interest, and any other amounts owing to the Franchise Tax Board, including any liability attributable to the period for which relief is requested.

(5) Pay any penalty imposed under subdivision (b) for the period for which relief is requested.

(b) (1) Except as provided in paragraph (2), both of the following shall apply:

(A) The period for which relief is requested shall begin on the date that one of the taxpayer's income years begins and ends on the date that relief is granted.

(B) The Franchise Tax Board shall assess a daily penalty equal to one hundred dollars ($100) for each day of the period for which relief from voidability is granted, but not to exceed a total penalty equal to the amount of the tax for the period for which relief is requested.

(2) If an application for relief from voidability is filed for a period in which an application for revivor has been filed and the certificate of revivor has been issued, all of the following shall apply:

(A) The period for which relief is requested shall begin on the date the taxpayer's powers, rights, and privileges had been suspended or forfeited and ends on the date relief is granted.

(B) The Franchise Tax Board shall assess a daily penalty equal to one hundred dollars ($100) for each day of the period for which relief from voidability is granted, but not to exceed a total penalty equal to that amount of the tax that would be imposed under Section 23151 and, except as provided in subparagraph (C), that penalty shall be equal to no less than the amount of the minimum tax provided under Section 23153 for the period for which relief is requested.

(C) In the case of an exempt organization or trust subject to Article 2 (commencing with Section 23731) of Chapter 4 (the tax on unrelated business taxable income), the daily penalty provided in subparagraph (B) shall not exceed a total penalty equal to the amount of tax imposed upon its unrelated business taxable income for the period for which relief is requested.

(3) Any penalty imposed under this subdivision shall, subject to Section 23305.2, be due and payable on demand by the Franchise Tax Board.

(c) (1) Upon satisfaction of the conditions specified in subdivision (a), including through the application of Section 23305.2, the following shall apply:

(A) All contracts entered into during the period for which relief is granted that have not been rescinded by a final court order pursuant to Section 23304.5 may be enforced in the same manner and to the same extent, with regard to both the parties to the contract and any third parties, as if the contract had never been voidable.

(B) Any sale, transfer, or exchange of real property in California during the period for which relief is granted and which the taxpayer at that time was not entitled to sell, transfer, or exchange by reason of subdivision (d) of Section 23302 and which has not been rescinded by a final court order pursuant to Section 23304.5, shall be as valid as if the taxpayer had not been subject to subdivision (d) of Section 23302 at the time of the sale, transfer, or exchange.

(2) Upon being granted relief from voidability, the Franchise Tax Board shall certify that relief to the taxpayer in a form and manner as prescribed by the Franchise Tax Board. The certificate shall be issued or mailed to the taxpayer, or as directed by the taxpayer, and shall indicate the period for which relief is granted.

(d) The fact that a certificate of relief from voidability was issued pursuant to this section and the information contained on that certificate shall be subject to public disclosure. The certificate shall be prima facie evidence of the relief from voidability for contracts entered into during the period of relief stated on the certificate and the certificate may be recorded in the office of the county recorder of any county of this state.

(e) Subject to limitations set forth in Section 17 of Chapter 926 of the Statutes of 1990, a taxpayer that received a certificate of revivor between January 1, 1990, and January 1, 1991, may apply for relief from voidability under this section.

SEC. 2. (a) Notwithstanding Section 23058 of the Revenue and Taxation Code, except as provided in subdivision (b), this act shall

be operative with respect to taxpayers that file applications for relief on or after January 1, 1994, without regard to income years.

(b) In the case of taxpayers who are issued a certificate for revivor prior to January 1, 1994, this act shall apply to only those taxpayers who both:

(1) Received a certificate of revivor between January 1, 1991, and January 1, 1994.

(2) Have contracts for which voidability relief could have been granted had the application for relief been filed simultaneous with the application for revivor.

(c) Notwithstanding subdivision (a), the Legislature intends that this act shall not be construed in any manner that would affect the rights of any party to any action that has been commenced in a court of competent jurisdiction prior to the date of enactment of this act, or the rights of that party in a subsequent action based upon the same claims as those asserted in the prior action, and that all those rights shall be determined without the application of this act, and shall be determined by the law in effect prior to January 1, 1994.

CHAPTER 681

An act to amend Section 6901 of the Labor Code, relating to occupational safety and health.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 6901 of the Labor Code is amended to read:

6901. (a) No common carrier operating more than four trains each way per day of 24 hours on any main track or branch line of railroad within this state, or on any part of a main track or branch line, shall run or permit to be run, on any part of a main track or branch line, any passenger, mail, or express train on which there is not employed at least one conductor, one brakeman, and the following:

(1) One engineer and one fireman for each diesel locomotive.

(2) One electric motorman for each train propelled or run by electricity.

(3) One motor or power control man for each train propelled by motive power other than diesel or electricity.

(4) Two brakemen, where four or more cars, exclusive of railroad officers' private cars, are hauled.

(5) One baggageman, except on a train upon which baggage is not hauled, and on gasoline motorcars.

(b) This section does not apply to any diesel locomotive weighing 45 tons or less.

(c) Paragraph (4) of subdivision (a) does not apply where its application would conflict with the terms of a collective bargaining agreement.

(d) Subdivision (a) does not apply to the San Diego Metropolitan Transit Development Board or the North San Diego County Transit Development Board.

(e) With respect to commuter train service provided by the San Diego Metropolitan Transit Development Board or the North San Diego County Transit Development Board, there shall be at least one qualified crewmember inside a train car set during revenue service. For the purpose of this subdivision, "revenue service" means service during which passengers are carried or are scheduled to be carried.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 682

An act to amend Sections 69899.5, 73107, 73110, 73111, 73113, 73113.5, 74004, 74012, 74344, and 74745 of, to add Sections 73110.5 and 73111.5 to, and to add Article 25.1 (commencing with Section 74355) to Chapter 10 of Title 8 of, the Government Code, relating to courts.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 69899.5 of the Government Code is amended to read:

69899.5. In the County of Orange, a majority of the judges of the superior court may appoint or delegate authority to the Superior Court Executive Officer to appoint the following officers and employees whose salaries shall be:

Number of Positions	Title	Salary Range
4	Accounting Assistant II—Superior Court	D36 S/3
1	Accounting Office Supervisor II—Superior Court	D46
1	Administrative Manager I	ML6

2	Administrative Services Assistant II—Superior Court	ML4
1	Assistant Superior Court Executive Officer	ML7
13	Attorney III—Superior Court	L3
23	Court Mediator	A60
1	Data Base and Security Administrator	A73
3	Data Entry Specialist—Superior Court	D39 S/2
2	Deputy Probation Officer II—Superior Court	A57
1	Director, Mediation/Investigative Services	A68
1	Executive Secretary I—Superior Court	D48
2	Executive Secretary II—Superior Court	D50
1	Information Systems Manager II	ML7
9	Information Processing Technician—Superior Court	D37 S/3
1	Information Systems Technician—Superior Court	A55
2	Master Calendar Assistant	D42
4	Mediation/Investigative Services Supervisor	A64
16	Office Assistant—Superior Court	D33 S/5
22	Office Specialist—Superior Court	D39
2	Office Supervisor C	D44
1	Office Supervisor D—Superior Court	D46
1	Personnel Services Coordinator II	A47
2	Probate Checker	A48
7	Probate Examiner II	A55
1	Probate Investigator II	A53
4	Probate Investigator I	A51
1	Secretary III—Superior Court	D44
2	Secretary I—Superior Court	D36 S/5
1	Senior Accountant/Auditor II	ML4
3	Senior Accounting Assistant	D41
13	Senior Judicial Secretary	D44
1	Senior Office Supervisor A-B—Superior Court	D47

4	Senior Staff Analyst	ML5
2	Senior Systems/Programmer Analyst Superior Court	A70
2	Staff Analyst III— Superior Court	ML4
1	Staff Analyst II— Superior Court	ML3
1	Storekeeper I— Superior Court	H10
4	Store Clerk— Superior Court	H7
12	Superior Court Commissioner	85% of Salary of Superior Court Judge
3	Superior Court Division Director	ML5
6	Superior Court Services Coordinator II	A62
2	Superior Court Services Supervisor I	D53
1	Superior Court Services Supervisor II	D56
1	Supervising Attorney— Superior Court	L4 S/2
1	Supervising Judicial Secretary	D47
1	Supervising Probate Examiner	A59
3	Systems Programmer Analyst I— Superior Court	A60
3	Systems Programmer Analyst II— Superior Court	A64
1	Technical Systems Specialist	A67
2	Utility Worker/Driver	A34

The references to a numbered salary range in this section are to the salary schedule in the Personnel and Salary Resolution of the County of Orange.

All personnel appointed pursuant to this section shall serve at the pleasure of the majority of the judges and may at any time be removed by the majority of the judges in their discretion or of the Superior Court Executive Officer when so delegated.

With the approval of the board of supervisors, the superior court may establish any additional positions, titles and pay rates as are required, and may appoint and employ any additional commissioners, officers, assistants, and other employees it deems necessary for the performance of the duties and exercise of the powers conferred by law upon the court and its members. Rates of compensation of all officers, assistants, and other employees authorized by this section, except those of court commissioners, may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the court, the Superior Court Executive Committee or the Superior Court Executive Officer when

so delegated.

All court personnel shall be entitled to any step advancement, vacation, sick leave, holiday benefits, other leaves of absence, lump-sum payments for sick leave and vacation when separated from the service, inclusion in the retirement system of the County of Orange and other benefits as may be adopted in a memorandum of understanding with a recognized employee organization or as may be directed by rules adopted by a majority of the judges as are provided to county employees of the county.

Superior court commissioners shall be entitled to any benefits as may be directed by rules adopted by the majority of the judges.

Where statutes require implementation by local ordinances for the extension of benefits to local officers and employees, these benefits may be made applicable, by rule, to those employees.

Rules of the court may include other matters pertaining to the general administration of the court, including conditions of employment of personnel. When the rules are adopted by a majority of the judges and filed with the Judicial Council they shall have the same status as other rules of court adopted pursuant to Section 68070.

When requested to do so by the court, the county shall furnish to the superior court any services as may be required in connection with the recruitment and employment of personnel.

All such personnel and judges shall be allowed actual traveling and necessary expenses incurred while engaged in the duties of their employment or office outside of the county.

SEC. 2. Section 73107 of the Government Code is amended to read:

73107. There shall be one clerk of the San Bernardino County Municipal Court District to be known as the municipal court administrator who shall be appointed by, and serve at the pleasure of, a majority of the judges, from among applicants certified to those judges on the basis of a competitive examination pursuant to personnel rules and regulations of the County of San Bernardino. The municipal court administrator shall receive an annual salary of eighty thousand one hundred eighteen dollars ($80,118) commencing July 1, 1992, and shall be the appointing authority for those positions listed in Section 73113.

SEC. 3. Section 73110 of the Government Code is amended to read:

73110. (a) There shall be one marshal designated as the Marshal of San Bernardino County, for the superior and municipal courts established in San Bernardino County. The marshal shall serve at the pleasure of a majority of the judges of the superior and municipal courts in the county. The marshal shall receive an annual salary of seventy-seven thousand eight hundred eighty-one dollars ($77,881) commencing July 1, 1992. The marshal shall be the appointing power for those positions listed in Section 73113 as being appointed by the marshal.

(b) Whenever required, the marshal shall attend all superior and

municipal courts held within San Bernardino County, provided, however, that a marshal shall attend a civil action only if the presiding judge or his or her designee makes a determination that the attendance of the marshal at that action is necessary for reasons of public safety.

(c) Whenever a vacancy occurs in the position of Marshal of San Bernardino County, the judges of the superior court and all the municipal courts in San Bernardino County, by a majority vote of their aggregate number, shall select and appoint the marshal under the organization, rules, and procedures they adopt or ratify therefor. Discharge of the marshal shall be by a majority vote of the judges of the municipal courts and the superior courts.

SEC. 4. Section 73110.5 is added to the Government Code, to read:

73110.5. There shall be, in San Bernardino County, the Court Service Oversight Committee which will consist of three judges from the municipal court, three judges from the superior court, and the presiding judge of the municipal court in even-numbered years and the presiding judge of the superior court in odd-numbered years. The presiding judge serving shall be the chairperson of the committee. The presiding judge of the superior court shall be the appointing authority for the members from the superior court and the presiding judge of the municipal court shall be the appointing authority for the members from the municipal court. The superior court administrator, the municipal court administrator, and the marshal shall be nonvoting members of the committee and shall act in an advisory capacity to the committee. The committee shall review and approve the marshal's budget annually. The committee may review and make recommendations to the marshal concerning policy and procedural issues that relate to the marshal's court service responsibility and may request action by the marshal to facilitate the efficient operation of the courts. The committee shall have the authority to recommend, after a hearing has been held and evidence presented, discipline or dismissal of the marshal of court services. The recommendation shall be supported by a majority vote of the judges sitting on the committee. That recommendation shall then be made to all the judges of the municipal and superior courts for further action. Based on the recommendation of the committee, and after due consideration of all facts and circumstances, the judges of the municipal and superior court, by a majority vote of their total number, may discipline the marshal or dismiss the marshal from office. The committee shall meet at least quarterly or as often as necessary to conduct business related to the marshal's court service operation.

SEC. 5. Section 73111 of the Government Code is amended to read:

73111. A branch office of the Marshal of San Bernardino County shall be maintained in each division of the superior and municipal courts of the county.

SEC. 6. Section 73111.5 is added to the Government Code, to read:

73111.5. Whenever required, the marshal shall attend all superior and municipal courts held within San Bernardino County. However, a marshal shall attend a civil action only if the presiding judge or his or her designee makes a determination that the attendance of the marshal at that action is necessary for reasons of public safety.

SEC. 7. Section 73113 of the Government Code is amended to read:

73113. The number of positions within each job classification which may be filled by appointment by the municipal court administrator and the marshal and the salary range prescribed in Section 73113.5 which constitutes the compensation for each job classification are as follows:

Appointed by the Municipal Court Administrator

Job Classification	Number	Salary Range Effective 12/28/91	Salary Range Effective 06/27/92
Accountant I	1	J48	K48
Assistant Municipal Court Administrator	1	J72	K72
Automated Systems Analyst I	1	J53	K53
Automated Systems Analyst II	1	J60	K60
Automated Systems Technician	4	J42	K42
Clerk III	104	J30	K30
Clerk IV	11	J34	K34
Court Reporter	18	J65	K65
Courtroom Clerk II	41	J41	K41
Executive Secretary III	1	J42	K42
Fiscal Clerk II	11	J31	K31
Fiscal Clerk III	2	J36	K36
Legal Procedures Clerk I	51	J32	K32
Legal Procedures Clerk II	4	J38	K38
Legal Procedures Clerk III	7	J45	K45
Municipal Court Division Manager I	5	J55	K55
Municipal Court Division Manager II	3	J59	K59
Municipal Court Division Supervisor I	5	J45	K45
Municipal Court Division Supervisor II	3	J51	K51
Secretary I	1	J35	K35

Secretary II	6	J38	K38
Supervisor of Administrative Services I	1	J54	K54

Appointed by Marshal

Job Classification	Number	Salary Range Effective ***	***	***	12-29-90	6-27-92
Marshal's Captain	3		***		H29	
Marshal's Lieutenant	8		***		H28	
Marshal's Sergeant	9		***		H25	
Deputy Marshal	112.5		***		F17	
Administrative Clerk II	1	***		***		K43
Marshal's Clerk II	13	***		***		K31
Marshal's Clerk I	19	***		***		K29
Marshal's Technician	25	***		***		K32
Marshal's Radio Dispatch Clerk	5	***		***		K33
Executive Secretary II	1	***		***		K38
Staff Analyst II	1	***		***		K54

The marshal shall also appoint as many deputy marshal keepers as may be required by law. The deputy marshal keepers shall be compensated at the fee allowed for keeping property.

In hiring for vacancies in the position of deputy marshal, the marshal may appoint successful candidates as deputy marshal probationary at a flat hourly rate. The flat hourly rate shall be in the sum of fourteen dollars and sixty-three cents ($14.63) commencing December 29, 1990, and shall be payable until successful completion of a probationary period of one year, except that the marshal may extend the probationary period for not to exceed six months, after which the deputy marshal probationary shall be advanced to the deputy marshal classification at the "A" step of the appropriate salary range.

SEC. 8. Section 73113.5 of the Government Code is amended to read:

73113.5. Whenever reference is made to a numbered salary range in any section of this chapter, the salary schedule found in the salary ordinance of San Bernardino County in effect on December 29, 1990, shall apply.

Administration of the salary plan provided by this chapter, including the hiring date; increases within range; salary on promotion, transfer, or demotion; salary on position reclassification, obligations and benefits and all other relevant matters, shall be in accordance with the current personnel rules and ordinances of the County of San Bernardino. The provisions of the San Bernardino County charter relating to civil service shall be applicable to all marshal employees in the same manner and to the same extent as applicable, generally, to the officers and employees of San Bernardino County. The San Bernardino County Civil Service

Commission shall exercise the same jurisdiction over marshal employees as it exercises over officers and employees of the county.

Notwithstanding any other provisions of law, the salary and classifications of municipal court and marshal employees provided by Sections 73107, 73110, 73113, 73114, 73121, and 73122, and this section may be increased or decreased within the range limits of the salary schedule incorporated by reference by this section in order to provide classification and compensation that is comparable to county employees of similar qualifications and experience in the classified service of San Bernardino County as that comparability is determined by the board of supervisors. Any salary increases granted or reclassifications made pursuant to this paragraph shall be effective only until January 1, 1994.

SEC. 9. Section 74004 of the Government Code is amended to read:

74004. (a) The number of positions within each job classification which may be filled by appointment by the executive officer/clerk, respectively, of each court, and the number of the salary range set forth in Section 74005 which constitutes the compensation for each job classification, are shown in the table below, in which the various municipal courts are designated by column headings from left to right, in the same order as that in which their judicial districts are named in Section 74000:

Class Code	Title Classification	Salary Range	NOC	COC	WOC	OCH	SOC
0359	Collection Officer, MC	A-47	0	0	1	0	0
0414	Data Entry Specialist, MC	D-39 S/2	0	1	0	0	1
0416	Data Entry Tech., MC.....	D-37 S/3	15	17	14	12	9
0439	Secretary II, MC	D-40	0	0	1	0	0
0442	Secretary III, MC	D-44	0	0	0	1	0
0454	Syst/Programmer Analyst I, MC	A-60	0	1	1	1	1
0566	Judicial Sec'y. I, MC.....	D-40 S/2	1	1	0	1	1
0569	Judicial Sec'y. II, MC	D-44	2	0	2	1	0
0570	Executive Secretary, MC ..	D-48	1	2	1	0	2
0703	Appeals Clerk, MC	D-37	0	0	0	1	1
0705	Deputy Clerk I, MC.....	D-33 S/5	50	62	46	27	45
0708	Deputy Clerk II, MC.....	D-35 S/3	24	30	23	38	23
0711	Deputy Clerk III, MC	D-40	11	9	12	11	8
0712	Judicial Ass't., MC.....	D-52	1	1	1	1	1
0713	Senior Judicial Ass't., MC ..	D-54	1	1	1	1	1
0714	Deputy Clerk IV, MC	D-42	2	2	0	0	0
0718	Supv. Deputy Clerk I, MC	D-43	2	4	1	0	1
0719	Supv. Deputy Clerk II, MC	D-46	2	5	4	4	5
0725	Division Manager II, MC ..	E-58	6	6	6	6	6
0740	Staff Development Spec., MC	A-56	0	1	0	0	0

0741	Electronic Recording Monitor	D-37	3	0	0	0	0
0742	Cert. Court Interpreter, MC	A-48	3	0	2	2	0
0745	Courtroom Clerk, MC	D-50	23	28	21	16	14
2381	Municipal Court Judicial Hearing Officer	Flat E-65	0	2	0	0	0
7509	Detention Release Officer	A-57 S/3	0	8	0	0	0
7510	Sr. Detention Release Officer	A-59	0	6	0	0	0
7511	Supv. Det. Rel. Officer	A-63	0	1	0	0	0
7918	Info. Systems Tech. II, MC	A-55	0	2	0	1	0
7922	Systems/Programmer Analyst II, MC	A-64	1	1	0	0	1
7929	Sr. System/Programmer Analyst, MC	A-70	1	1	1	1	1
8005	Senior Staff Analyst	ML-5	2	2	2	2	2
8449	ASA Municipal Court	E-63	0	1	1	1	1
0709	Court Processing Spec. II	D-39	81	58	69	62	67
0487	Data Entry Supv. II	D-44	0	2	0	2	0
0536	Office Specialist	D-39	0	0	0	0	2
0514	Office Supervisor B	D-42	0	0	0	0	1
0521	Office Supervisor C	D-44	12	0	0	5	0
0523	Office Supervisor D	D-46	2	9	9	2	9
0721	Sr. Courtroom Clerk, MC	D-54	0	1	0	1	1
0526	Sr. Office Supv. C/D	D-50	4	5	4	4	4
8542	Staff Assistant	A-47	0	4	0	0	0

(b) The Legislature finds and declares that the matter of appointing, promoting, demoting, and dismissing persons in positions with the municipal courts and all other aspects of the personnel management of municipal courts of Orange County is one for local concern. It further finds and declares that wherever possible such personnel management may grant to persons in positions with the municipal courts similar treatment with persons in positions with the County of Orange who are performing similar duties and who possess similar qualifications.

(c) To achieve the legislative intent expressed in subdivisions (a) and (b), the municipal courts of Orange County may create a personnel committee consisting of five judges selected one from each court by a majority vote of the judges of the respective courts, or where there is an equal division of the judges of a court, by the senior judge of that court. The personnel committee may adopt rules and regulations providing for a personnel system for all municipal courts of Orange County which may provide for similar treatment for employees and attachés of the several courts as is provided for Orange County employees generally. In so providing for a personnel system, the judges may adopt all or any part of the personnel and salary resolution or appropriate memoranda of understanding of the

County of Orange.

(d) With the approval of the board of supervisors, the personnel system adopted by the personnel committee and made applicable to all the municipal courts of Orange County may be administered by the County of Orange through its personnel department. The board of supervisors may withdraw its approval at any time.

(e) If an increase in the business of the court or any other emergency requires a greater number of attachés or employees for the prompt and faithful discharge of the business of the court than the number expressly provided in this article or requires the performance of duties of positions in a class not expressly provided in this article, a majority of the judges of any of the courts, with the approval of the board of supervisors, may establish additional titles, pay rates, and positions as they deem necessary for the performance of the duties and exercise of the powers conferred by law upon the courts. Rates of compensation of such other officers, attachés, and employees may be set by joint action and approval of the board of supervisors and a majority of the municipal court judges of Orange County. The establishment of additional titles, positions, and pay rates and changes in compensation made pursuant to this subdivision shall be on an interim basis and shall expire on January 1 of the second year following the year in which such establishment or change is made. The provisions of this section are directory only and are not intended to affect the application of Section 72150.

SEC. 10. Section 74012 of the Government Code is amended to read:

74012. The marshal may make the following appointments at the designated salary ranges:

Title of Job Classification	Applicable Pay Range Number	Number of Positions Authorized
Captain	MM2	3
Lieutenant	MM1	9
Sergeant	P11	21
Marshal's Investigator II	P9 S/3	7
Marshal's Investigator I	P6 S/3	13
Deputy Marshal II	P3	28
Deputy Marshal I	P1	229
Court Services Officer	A46	45
Senior Court Services Officer	A50	4
Administrative Manager I	ML6	1
Systems/Programmer Analyst II—Marshal	A64	2
Secretary III—Marshal	D44	1
Executive Secretary I—Marshal	D48	1
Supervising Clerk III—Marshal	D45	1
Supervising Clerk II—Marshal	D42	1
Senior Chief Clerk—Marshal	D48	1

Chief, Civil Process	D50	5
Civil Process Supervisor	D44	5
Civil Process Technician	D39	34
Information Processing Technician—Marshal	D37 S/3	9
Clerk III, Marshal	D38	2
Clerk II, Marshal	D35 S/3	2
Marshal's Technician	D38	16
Radio Dispatcher—Marshal	A50	2
Deputy Marshal Trainee	PA S/12	6
Investigation Aide—Marshal	D38	1
Micrographics Processing Technician—Marshal	A39	1
Accounting Assistant—Marshal	D36 S/3	1
Office Technician—Marshal	D33 S/5	1
Senior Systems/Programmer Analyst	A70	2

SEC. 11. Section 74344 of the Government Code is amended to read:

74344. The court administrator may appoint:

(a) One assistant court administrator, with the consent of a majority of the judges of the court, who shall be empowered to act in the place and stead of the court administrator in the event that the court administrator is absent or unavailable for any reason. Persons appointed to this position on or after January 1, 1991, shall serve at the pleasure of the court administrator. The assistant court administrator shall receive a biweekly salary within the biweekly rate range ES-12 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

(b) Four deputy court administrator, with the consent of a majority of the judges of the court, one of whom shall be empowered to act in the place and stead of the assistant court administrator in the event that the assistant court administrator is absent or unavailable for any reason. Persons appointed to these positions on or after January 1, 1991, shall serve at the pleasure of the court administrator. A deputy court administrator shall receive a salary within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to

"executive compensation committee" or "the Chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

(c) Four deputy clerk-division managers III who shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division manager II. Two of these positions may be designated as branch managers. When a position is designated branch manager, the incumbent shall receive a bonus of 10 percent.

(d) Six deputy clerk-division managers II or deputy clerk-division manager I as the case may be. A deputy clerk-division manager II shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V. A deputy clerk-manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V.

(e) Thirteen deputy clerks V each of whom shall receive a biweekly salary at a rate 32.6 percent higher than that specified for deputy clerk III.

(f) One deputy clerk V or deputy clerk-division manager I may be designated as calendar coordinator by the court administrator and shall receive a bonus of 15.5 percent or 5.5 percent, respectively.

(g) Fifty-eight deputy clerks IV, or senior deputy clerks, as the case may be. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerks in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III. The class of senior deputy clerk shall not exceed 17 positions. Each of the senior deputy clerks shall receive a biweekly salary at a rate 5 percent higher than that specified for deputy clerk IV. The duties of the class of senior deputy clerk shall include supervisory responsibilities.

(h) Two hundred six deputy clerks III, II, I, or deputy clerk-intermediate clerk typists as the case may be. Each deputy clerk III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each deputy clerk II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each deputy clerk I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. Appointments to deputy clerk I may be at any step within the salary range at the discretion of the court administrator. Up to 10 of these positions may be filled at the level of deputy clerk-intermediate clerk typist. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego.

(i) Four deputy clerk-assistants, associate or senior accountants, as the case may be. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for assistant

accountant in the classified service of the County of San Diego. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for associate accountant in the classified service of the County of San Diego. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for senior accountant in the classified service of the County of San Diego.

(j) Twelve deputy clerk-court interpreters, each of whom shall receive a biweekly salary at a rate equal to that specified for superior court clerk interpreter in the superior court service of the County of San Diego.

(k) One deputy clerk-interpreter coordinator or deputy clerk-chief interpreter, as the case may be. A deputy clerk-interpreter coordinator shall receive a biweekly salary at a rate equal to that specified for deputy clerk V. A deputy clerk-chief interpreter shall receive a biweekly salary at a rate 8 percent higher than that specified for deputy clerk V. Appointments to deputy clerk-interpreter coordinator or deputy clerk-chief interpreter may be at any step within the salary range at the discretion of the court administrator.

(*l*) One deputy clerk-municipal court secretary who shall receive a biweekly salary at a rate equal to that specified for confidential legal secretary III in the classified service of the County of San Diego. At the discretion of the court administrator appointment to the deputy clerk-municipal court secretary may be at any step within the salary range.

(m) One deputy clerk-administrative secretary IV, III, II, or I, as the case may be. A deputy clerk-administrative secretary IV shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(n) One deputy clerk-administrative service manager I or II as the case may be. A deputy clerk-administrative services manager I or II shall receive a biweekly salary at a rate equal to that specified for administrative services manager I or II, respectively, in the classified service of the County of San Diego.

(o) Three deputy clerk-administrative assistants III, II, I, or trainee as the case may be. A deputy clerk-administrative assistant III shall receive a biweekly salary at a rate equal to that specified for administrative assistant III in the classified service of the County of San Diego. A deputy clerk-administrative assistant II shall receive a biweekly salary at a rate equal to that specified for administrative

assistant II in the classified service of the County of San Diego. A deputy clerk-administrative assistant I shall receive a biweekly salary at a rate equal to that specified for administrative assistant I in the classified service of the County of San Diego. A deputy clerk-administrative assistant trainee shall receive a biweekly salary at a rate equal to that specified for administrative assistant trainee in the classified service of the County of San Diego.

(p) One deputy clerk-principal administrative analyst. A deputy clerk-principal administrative analyst shall receive a biweekly salary at a rate equal to that specified for the class of principal administrative analyst in the classified service of the County of San Diego.

(q) Four deputy clerk-principal systems analysts, senior systems analysts, associate systems analysts, assistant systems analysts, or systems analyst trainees, as the case may be. A deputy clerk-principal systems analyst shall receive a biweekly salary at a rate equal to that specified for principal systems analyst in the classified service of the County of San Diego. A deputy clerk-senior systems analyst shall receive a biweekly salary at a rate equal to that specified for senior systems analyst in the classified service of the County of San Diego. A deputy clerk-associate systems analyst shall receive a biweekly salary at a rate equal to that specified for associate systems analyst in the classified service of the County of San Diego. A deputy clerk-assistant systems analyst shall receive a biweekly salary at a rate equal to that specified for assistant systems analyst in the classified service of the County of San Diego. A deputy clerk-systems analyst trainee shall receive a biweekly salary at a rate equal to that specified for systems analyst trainee in the classified service of the County of San Diego.

(r) Two deputy clerk-LAN systems analyst I, II, III, or supervisor as the case may be. A deputy clerk-LAN systems analyst I shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst I in the classified service of the County of San Diego. A deputy clerk-LAN systems analyst II shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst II in the classified service of the County of San Diego. A deputy clerk-LAN systems analyst III shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst III in the classified service of the County of San Diego. A deputy clerk-LAN systems supervisor shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems supervisor in the classified service of the County of San Diego.

(s) One deputy clerk-print shop helper, offset equipment operator, or publication supervisor, as the case may be. A deputy clerk-print shop helper shall receive a biweekly salary at a rate equal to that specified for print shop helper in the classified service of the County of San Diego. A deputy clerk-offset equipment operator shall receive a biweekly salary at a rate equal to that specified for offset equipment operator in the classified service of the County of San

Diego. A deputy clerk-publication supervisor shall receive a biweekly salary at a rate equal to that specified for publications supervisor in the classified service of the County of San Diego.

(t) One deputy clerk-research attorney III or IV, as the case may be. A deputy clerk-research attorney IV shall receive a biweekly salary at a rate equal to that specified for deputy county counsel IV in the classified service of the County of San Diego. A deputy clerk-research attorney III shall receive a biweekly salary at a rate equal to that specified for deputy county counsel III in the classified service of the County of San Diego. Persons appointed to these positions after January 1, 1991, shall serve at the pleasure of the court administrator.

(u) Four deputy clerk-research attorneys I or research attorneys II, as the case may be. Notwithstanding subdivision (b) of Section 74348, persons appointed to these positions on or after January 1, 1990, shall serve at the pleasure of the court administrator. A deputy clerk-research attorney I shall receive a biweekly salary at a rate equal to that specified for deputy county counsel I in the classified service of the County of San Diego. A deputy clerk-research attorney II shall receive a biweekly salary at a rate equal to that specified for deputy county counsel II in the classified service of the County of San Diego.

(v) Two deputy clerk-legal assistant I or II, as the case may be. A deputy clerk-legal assistant I shall receive a biweekly salary at a rate equal to that specified for legal assistant I in the classified service of the County of San Diego. A deputy clerk-legal assistant II shall receive a biweekly salary at a rate equal to that specified for legal assistant II in the classified service of the County of San Diego.

(w) Notwithstanding subdivision (b) of Section 74348, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Section 74345 pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of those classes. The rate of pay for each individual employed in this class shall be within the designated range at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When an appointment is made, the class, compensation (including salary and

fringe benefits), and number of those positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the joint action may designate that person serving in the class pending establishment shall serve at the pleasure of the court administrator. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and the board of supervisors.

(x) Notwithstanding subdivision (b) of Section 74348, up to 10 extra help deputy clerk-junior clerk positions (hourly rate) at the junior clerk-typist level, to be appointed by and serve at the pleasure of the court administrator. These appointments shall be temporary for a period not to exceed six months, plus one additional period at the court administrator's option, not to exceed six months.

(y) Notwithstanding subdivision (b) of Section 74348, up to 20 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with persons employed for a period not to exceed 120 working days or 960 hours, whichever is greater, during a fiscal year on a part-time basis.

(z) Notwithstanding subdivision (b) of Section 74348, the court administrator may appoint up to 30 temporary extra help deputy clerk-municipal court trainees I, II, III, or V, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the service of the County of San Diego. A deputy clerk-municipal court trainee V shall receive a biweekly salary at a rate equal to that specified for student worker V in the service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time

basis for up to six months from the first day of the month following their date of graduation.

(aa) Seven deputy clerk-administrative clerks III, II, or I, as the case may be. A deputy clerk-administrative clerk III shall receive a biweekly salary at a rate equal to that specified for deputy clerk IV. A deputy clerk administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy clerk administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(ab) One deputy clerk-personnel officer I, II, or municipal court personnel officer as the case may be. A deputy clerk-personnel officer I or II shall receive a biweekly salary at a rate equal to that specified for departmental personnel officer I or II, respectively, in the classified service of the County of San Diego. A deputy clerk-municipal court personnel officer shall receive a biweekly salary at a rate equal to that specified for departmental personnel officer III in the classified service of the County of San Diego.

(ac) Four deputy clerk-analysts trainee I, II, or III, as the case may be. A deputy clerk-analyst trainee shall receive a biweekly salary at a rate equal to that specified for analyst trainee in the classified service of the County of San Diego. A deputy clerk-analyst I, II, or III, shall receive a biweekly salary at a rate equal to that specified for analyst I, II, or III, respectively, in the classified service of the County of San Diego.

(ad) One deputy clerk-staff development specialist or deputy clerk-staff development coordinator as the case may be. A deputy clerk-staff development specialist shall receive a biweekly salary at a rate equal to that specified for staff development specialist in the classified service of the County of San Diego. A deputy clerk-staff development coordinator shall receive a biweekly salary at a rate 5 percent higher than that specified for staff development specialist in the classified service of the County of San Diego.

(ae) Notwithstanding any other provision of law, the number of positions in classifications authorized under (c) to (x), inclusive, and (z) to (ad), inclusive, of this section and under Section 74352 may be increased by up to 136 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to the positions shall be the same as those applicable to the class of those positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting such positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which the resolution becomes effective, unless earlier ratified by the Legislature.

SEC. 12. Article 25.1 (commencing with Section 74355) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 25.1. Municipal Courts of San Diego County

74355. This article applies jointly to the four municipal courts established in this chapter as the El Cajon Judicial District, North County Judicial District, San Diego Judicial District, and the South Bay Judicial District for purposes of establishing positions, and compensation for those positions, for the San Diego County Municipal Court Information Services Unit.

74356. (a) A majority of the Court Administrators of the Municipal Courts of San Diego County may appoint one Information Services Manager-Municipal Courts who shall serve at the pleasure of a majority of the Court Administrators of the Municipal Courts. The biweekly salary of the Information Services Manager-Municipal Courts shall be within the biweekly rate range ES-9 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the Court of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "a majority of the Court Administrators of the Municipal Court." An appointment to this position shall not be made unless the Board of Supervisors provides the necessary funds to fill the position.

(b) The work plan of the Municipal Court Information Services Unit shall be determined by a majority of the Municipal Court Administrators of San Diego County. For the purpose of this subdivision, any determination by a majority of the Municipal Court Administrators of San Diego County shall be made by a vote of the Municipal Court Administrators with the votes weighted as follows: San Diego Municipal Court Administrator, 40 percent; each of the other three Municipal Court Administrators, 20 percent.

74357. A majority of the San Diego County Municipal Court Administrators may appoint:

(a) Seven deputy clerk-principal systems analysts, senior systems analysts, associate systems analysts, assistant systems analysts, or systems analyst trainees, as the case may be. A deputy clerk-principal systems analyst shall receive a biweekly salary at a rate equal to that specified for principal systems analyst in the classified service of the County of San Diego. A deputy clerk-senior systems analyst shall receive a biweekly salary at a rate equal to that specified for senior systems analyst in the classified service of the County of San Diego. A deputy clerk-associate systems analyst shall receive a biweekly salary at a rate equal to that specified for associate systems analyst in the classified service of the County of San Diego. A deputy

clerk-assistant systems analyst shall receive a biweekly salary at a rate equal to that specified for assistant systems analyst in the classified service of the County of San Diego. A deputy clerk-systems analyst trainee shall receive a biweekly salary at a rate equal to that specified for systems analyst trainee in the classified service of the County of San Diego.

(b) Two deputy clerk-LAN systems analyst I, II, III, or supervisor, as the case may be. A deputy clerk-LAN systems analyst I shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst I in the classified service of the County of San Diego. A deputy clerk-LAN systems analyst II shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst II in the classified service of the County of San Diego. A deputy clerk-LAN systems analyst III shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst III in the classified service of the County of San Diego. A deputy clerk-LAN systems supervisor shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems supervisor in the classified service of the County of San Diego.

(c) One deputy clerk-administrative secretary III, II, or I, as the case may be. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(d) One deputy clerk-analyst trainee or deputy clerk-analyst I, II, or III, as the case may be. A deputy clerk-analyst trainee shall receive a biweekly salary at a rate equal to that specified for analyst trainee in the classified service of the County of San Diego. A deputy clerk-analyst I, II, or III shall receive a biweekly salary at a rate equal to that specified for analyst I, II, or III, respectively, in the classified service of the County of San Diego.

(e) Notwithstanding subdivision (b) of Section 74359, up to five temporary extra help deputy clerk-municipal court trainees I, II, III, or V, who shall be paid at an hourly rate and shall serve at the pleasure of a majority of the Court Administrators. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee V shall receive a biweekly salary at a

rate equal to that specified for student worker V in the service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(f) Notwithstanding subdivision (b) of Section 74359, up to five extra help positions (hourly rate) to be appointed by and serve at the pleasure of a majority of the court administrators in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months at the court administrators' option. Notwithstanding any other provisions of this section, the court administrators may fill these positions with persons employed for a period not to exceed 120 working days or 960 hours, whichever is greater, during a fiscal year on a part-time basis.

(g) Notwithstanding subdivision (b) of Section 74359, up to five deputy clerk-court workers may be appointed by and serve at the pleasure of a majority of the court administrators. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Section 74345 pending a review and evaluation of the duties of these positions by the court administrators, and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the rate of pay for each individual employed in this class shall be within the designated range at a rate determined by the court administrators following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months.

Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When that appointment is made, the class, compensation (including salary and fringe benefits), and number of those positions may be established by joint action of the majority of the municipal court judges, of the four judicial districts in San Diego County, and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the joint action may designate that person serving in the class pending establishment shall serve at the pleasure of the court administrators. By a majority vote, the court administrators may then appoint additional attachés to these classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation as provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following

promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and the board of supervisors.

(h) Except as provided herein, the provisions of Section 74345 shall apply to the attachés appointed pursuant to this section and Section 74356.

(i) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (a) to (d), inclusive, of this section may be increased by up to 10 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointments of persons to those positions shall be the same as those applicable to the class of positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting those positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on the adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which the resolution is adopted, unless earlier ratified by the Legislature.

74358. Any positions authorized by Section 74357 may be filled by independent contractors on a contractual basis with the approval of a majority of the Court Administrators of the Municipal Courts of San Diego County. Should any of the positions be filled by independent contractors on a contractual basis, the provisions of Section 74359 shall not apply for those positions only.

74359. (a) In addition to the salary provided in this article, the classes of attachés of the Municipal Court Information Services Unit shall receive, and they shall be entitled to, the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for the employees of the County of San Diego in the comparable classes specified in Section 74345.

The Information Services Manager-Municipal Courts shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may be hereafter received by the classification of Deputy Director-Information Services of the County of San Diego. However, all employees of the Municipal Court Information Services Unit shall be eligible to enroll in the dental and vision group insurance plans sponsored by the County of San Diego.

The purpose and intent of this subdivision is to provide all Municipal Court Information Services Unit employees with any and all fringe benefits, but no more than those which are available to their comparable classes in the service of the County of San Diego as specified in this section or in Section 74345. Whenever action or approval by the chief administrative officer or the county personnel director is required for the county benefit, it shall be taken or given, as to comparable Municipal Court Information Services Unit

employees other than those serving at the pleasure of the court administrators, by a majority of the Court Administrators of the Municipal Courts of San Diego County. Changes in fringe benefits shall be effective on the same date as those for employees of the County of San Diego in comparable classes. The majority of all the municipal court administrators may adopt rules for the conduct of the personnel privileges to be afforded the court, excluding fringe benefits.

(b) All employees, other than those persons serving at the pleasure of their appointing authorities, may be appointed, promoted, removed, suspended, laid off, or discharged for cause by a majority of the court administrators subject in that appointment, promotion, removal, suspension, layoff, or discharge to civil service provisions applicable to the classified personnel of the County of San Diego. Whenever these employees are appointed or promoted to a position, they must serve a probationary period of one year, as specified in the job announcement for the class prior to appointment.

SEC. 13. Section 74745 of the Government Code is amended to read:

74745. The court administrator may appoint with the approval of the judges:

(a) Three deputy court administrators. Persons appointed to this position on or after January 1, 1993, shall serve at the pleasure of the court administrator. The deputy court administrators shall receive a salary within the biweekly rate range ES-6 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "the chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator." Notwithstanding subdivision (b) of Section 74749, persons who hold the position of deputy clerk-administrative services manager III, deputy clerk division manager III and II on January 1, 1993, may be appointed by the court administrator to the position of deputy clerk-deputy court administrator without further examination subject to certification by the court administrator that the person possesses the minimum qualifications and necessary skills to perform the duties of the position.

(b) One deputy clerk-administrative assistant trainee, I, II, or III as the case may be. A deputy clerk-administrative assistant trainee shall receive a biweekly salary at a rate equal to that specified for administrative trainee in the classified service of the County of San Diego. A deputy clerk-administrative assistant I shall receive a biweekly salary at a rate equal to that specified for administrative assistant I in the classified service of the County of San Diego. A deputy clerk-administrative assistant II shall receive a biweekly

salary at a rate equal to that specified for administrative assistant II in the classified service of the County of San Diego. A deputy clerk-administrative assistant III shall receive a biweekly salary at a rate equal to that specified for administrative assistant III in the classified service of the County of San Diego.

(c) One deputy clerk-division managers I or II, as the case may be. A division manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V in the San Diego Judicial District. A division manager II shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V in the San Diego Judicial District.

(d) One deputy clerk-assistant, associate, or senior accountant, as the case may be. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for assistant accountant in the classified service of the County of San Diego. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for associate accountant in the classified service of the County of San Diego. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for senior accountant in the classified service of the County of San Diego.

(e) One deputy clerk-staff development specialist or a deputy clerk-staff development coordinator, as the case may be. A deputy clerk-staff development specialist shall receive a biweekly salary at a rate equal to that specified for staff development specialist in the classified service of the County of San Diego. A deputy clerk-staff development coordinator shall receive a biweekly salary at a rate 5 percent higher than that specified for staff development specialist in the classified service of the County of San Diego.

(f) Nine deputy clerks IV. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III.

(g) Fifty-two deputy clerks III, II, or I, or deputy clerk-intermediate clerk typists, as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each of the deputy clerks II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to the deputy clerk I classification may be at any step within the salary range. Up to three of these positions may be filled at the level of deputy clerk-intermediate clerk typist. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego.

(h) Three deputy clerk-data entry operators, each of whom shall receive a biweekly salary at a rate equal to that specified for data entry operator in the classified service of the County of San Diego.

(i) One deputy clerk-administrative secretary III, II, or I, as the case may be. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(j) Four deputy clerk-court interpreters who shall receive a biweekly salary at a rate equal to that specified for superior court clerk-interpreter in the superior court service of the County of San Diego.

(k) Notwithstanding subdivision (b) of Section 74749, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 74740 to 74750, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of those classes. The rate of pay for each individual employed in this class shall be within the range proposed for the class pending establishment, at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the classified service of the County of San Diego to which the pending class shall be tied for benefit purposes. When that appointment is made, the class, compensation (including salary and fringe benefits), and number of those positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the joint action may designate that persons serving in the class pending establishment shall serve at the pleasure of the court administrator. The court administrator may then appoint additional attachés to the classes of positions in the same manner as those for which express provision is made, and they shall receive the

compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and the board of supervisors.

(*l*) Notwithstanding subdivision (b) of Section 74749, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with personnel employed for a period not to exceed 120 working days or 960 hours, whichever is greater, during a fiscal year on a part-time basis.

(m) Notwithstanding subdivision (c) of Section 74749, the court administrator may appoint up to 15 temporary extra help deputy clerk-municipal court trainees I, II, III, or V, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee V shall receive a biweekly salary at a rate equal to that specified for student worker V in the classified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(n) Except as provided herein, the provisions of Section 74345 shall apply to the attachés appointed pursuant to this section and Section 74744.

(o) Three deputy administrative clerks III, II, or I, as the case may be. A deputy administrative clerk III shall receive a biweekly salary at a rate equal to that specified for deputy clerk IV. A deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(p) Six deputy clerks V, each of whom shall receive a biweekly salary equal to that specified for deputy clerk V in the San Diego Municipal Court. The duties of the class of deputy clerk V shall

include supervisory responsibilities.

(q) One deputy clerk-municipal court secretary, who shall receive a salary at a rate equal to that specified for confidential legal secretary III in the classified service of the County of San Diego. At the discretion of the court administrator appointment to the deputy clerk-municipal court secretary may be at any step within the salary range.

(r) One deputy clerk-senior systems analyst, associate systems analyst, assistant systems analyst, or systems analyst trainee, as the case may be. A deputy clerk-senior systems analyst shall receive a biweekly salary at a rate equal to that specified for senior systems analyst in the classified service of the County of San Diego. A deputy clerk-associate systems analyst shall receive a biweekly salary at a rate equal to that specified for associate systems analyst in the classified service of the County of San Diego. A deputy clerk-assistant systems analyst shall receive a biweekly salary at a rate equal to that specified for assistant systems analyst in the classified service of the County of San Diego. A deputy clerk-systems analyst trainee shall receive a biweekly salary at a rate equal to that specified for systems analyst trainee in the classified service of the County of San Diego.

(s) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (a) to (k), inclusive, (m), and (o) to (r), inclusive, of this section may be increased by up to 20 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointments of persons to those positions shall be the same as those applicable to the class of such positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting those positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on the adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which the resolution is adopted, unless earlier ratified by the Legislature.

SEC. 14. This act shall not become operative unless Assembly Bill 2207 of the 1993–94 Regular Session is enacted and becomes effective on or before January 1, 1994.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2

of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specific in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 683

An act to amend Section 12101 of the Health and Safety Code, and to amend Section 12305 of the Penal Code, relating to destructive devices.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 12101 of the Health and Safety Code is amended to read:

12101. (a) No person shall do any one of the following without first having made application for and received a permit in accordance with this section:

(1) Manufacture explosives.

(2) Sell, furnish, or give away explosives.

(3) Receive, store, or possess explosives.

(4) Transport explosives.

(5) Use explosives.

(6) Operate a terminal for handling explosives.

(7) Park or leave standing any vehicle carrying explosives, except when parked or left standing in or at a safe stopping place designated as such by the Department of the California Highway Patrol under Division 14 (commencing with Section 31600) of the Vehicle Code.

(b) Application for a permit shall be made to the appropriate issuing authority.

(c) (1) A permit shall be obtained from the issuing authority having the responsibility in the area where the activity, as specified in subdivision (a), is to be conducted.

(2) If the person holding a valid permit for the use or storage of explosives desires to purchase or receive explosives in a jurisdiction other than that of intended use or storage, the person shall first present the permit to the issuing authority in the jurisdiction of purchase or receipt for endorsement. The issuing authority may include any reasonable restrictions or conditions which the authority finds necessary for the prevention of fire and explosion, the preservation of life, safety, or the control and security of explosives within the authority's jurisdiction. If, for any reason, the issuing

authority refuses to endorse the permit previously issued in the area of intended use or storage, the authority shall immediately notify both the issuing authority who issued the permit and the Department of Justice of the fact of the refusal and the reasons for the refusal.

(3) Every person who sells, gives away, delivers, or otherwise disposes of explosives to another person shall first be satisfied that the person receiving the explosives has a permit valid for that purpose. When the permit to receive explosives indicates that the intended storage or use of the explosives is other than in that area in which the permittee receives the explosives, the person who sells, gives away, delivers, or otherwise disposes of the explosives shall insure that the permit has been properly endorsed by a local issuing authority and, further, shall immediately send a copy of the record of sale to the issuing authority who originally issued the permit in the area of intended storage or use. The issuing authority in the area in which the explosives are received or sold shall not issue a permit for the possession, use, or storage of explosives in an area not within the authority's jurisdiction.

(d) In the event any person desires to receive explosives for use in an area outside of this state, a permit to receive the explosives shall be obtained from the State Fire Marshal.

(e) A permit may include any restrictions or conditions which the issuing authority finds necessary for the prevention of fire and explosion, the preservation of life, safety, or the control and security of explosives.

(f) A permit shall remain valid only until the time when the act or acts authorized by the permit are performed, but in no event shall the permit remain valid for a period longer than one year from the date of issuance of the permit.

(g) Any valid permit which authorizes the performance of any act shall not constitute authorization for the performance of any act not stipulated in the permit.

(h) An issuing authority shall not issue a permit authorizing the transportation of explosives pursuant to this section if the display of placards for that transportation is required by Section 27903 of the Vehicle Code, unless the driver possesses a license for the transportation of hazardous materials issued pursuant to Division 14.1 (commencing with Section 32000) of the Vehicle Code, or the explosives are a hazardous waste or extremely hazardous waste, as defined in Sections 25117 and 25115 of the Health and Safety Code, and the transporter is currently registered as a hazardous waste hauler pursuant to Section 25163 of the Health and Safety Code.

(i) An issuing authority shall not issue a permit pursuant to this section authorizing the handling or storage of class A or B explosives in a building, unless the building has caution placards which meet the standards established pursuant to subdivision (g) of Section 12081.

(j) A permit shall not be issued to a person who meets any of the following criteria:

(1) He or she has been convicted of a felony.

(2) He or she is addicted to a narcotic drug.

(3) He or she is in a class prohibited by Section 8100 or 8103 of the Welfare and Institutions Code.

(k) An issuing authority shall inquire with the Department of Justice for the purposes of determining whether a person who is applying for a permit meets any of the criteria specified in subdivision (j). The Department of Justice shall determine whether a person who is applying for a permit meets any of the criteria specified in subdivision (j) and shall either grant or deny clearance for a permit to be issued pursuant to the determination. The Department of Justice shall not disclose the contents of a person's records to any person who is not authorized to receive the information in order to ensure confidentiality.

SEC. 2. Section 12305 of the Penal Code is amended to read:

12305. (a) Every dealer, manufacturer, importer, and exporter of any destructive device, or any motion picture or television studio using destructive devices in the conduct of its business, shall obtain a permit for the conduct of that business from the Department of Justice.

(b) Any person, firm, or corporation not mentioned in subdivision (a) shall obtain a permit from the Department of Justice in order to possess or transport any destructive device. No permit shall be issued to any person who meets any of the following criteria:

(1) Has been convicted of any felony.

(2) Is addicted to the use of any narcotic drug.

(3) Is a person in a class prohibited by Section 8100 or 8103 of the Welfare and Institutions Code.

(c) Applications for permits shall be filed in writing, signed by the applicant if an individual, or by a member or officer qualified to sign if the applicant is a firm or corporation, and shall state the name, business in which engaged, business address and a full description of the use to which the destructive devices are to be put.

(d) Applications and permits shall be uniform throughout the state on forms prescribed by the Department of Justice.

(e) Each applicant for a permit shall pay at the time of filing his or her application a fee not to exceed the application processing costs of the Department of Justice. A permit granted pursuant to this article may be renewed one year from the date of issuance, and annually thereafter, upon the filing of a renewal application and the payment of a permit renewal fee not to exceed the application processing costs of the Department of Justice. After the department establishes fees sufficient in amount to cover processing costs, the amount of the fees shall only increase at a rate not to exceed the legislatively approved cost-of-living adjustment for the department.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant

to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 684

An act to amend Section 20930.11 of, and to add and repeal Sections 20569.4 and 31657.1 of, the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 20569.4 is added to the Government Code, to read:

20569.4. Notwithstanding any other provision of this article, the board may, pursuant to this section and Section 31657.1, enter into an agreement with the governing body of a city whose contract has been in effect for at least five years and the board of supervisors of a county maintaining a retirement system established under the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), for termination of participation of a city with respect to local safety members who have ceased to be employed by the city and have been employed by a county or district as a result of a transfer of firefighting or law enforcement functions from the city to the county or district and inclusion of the former city employees in that county system. The agreement shall contain such provisions as the board finds necessary to protect the interests of the system for determination of the amount, time, manner of transfer of cash or the securities, or both, to be transferred to the county system as representing the actuarial value of the interests in the retirement fund of the city and the transferred employees by reason of accumulated contributions credited to that city and the employees transferred. The agreement shall apply only to employees who are employed by the county or district on the effective date of the agreement. All liability of this system with respect to the members transferred under that agreement shall cease and shall become the liability of the county system as of the date of transfer specified in the agreement. Liability of the county system shall be for payment of benefits to transferred employees in accordance with the County

Employees Retirement Law of 1937. Any member transferred who becomes a member of a county system upon that transfer date shall be subject to this part of the County Employees Retirement Law of 1937 extending rights to a member or subjecting him or her to limitations because of membership in another retirement system to the same extent that he or she would have been, had he or she been a member of the county system during his or her membership in this system.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 2. Section 20930.11 of the Government Code is amended to read:

20930.11. "Public service," with respect to a local member who is a full-time employee, also means any time on or after January 1, 1981, but not to exceed 12 months, during which the local member is laid off. In the event the member becomes subject to membership through employment in another member classification during the layoff period, any service credit accumulated through and contributions associated with the intervening employment shall be revoked upon election by the member to purchase public service credit as provided by this section. The service credit provided by this section shall not exceed one year for each layoff period and shall be provided to any person who: (1) returns within 12 months of the date of layoff to full-time employment under the procedures of the employer for returning laid-off employees to work; (2) elects to purchase the public service credit within three years of return to work or the effective date of the contract amendment to become subject to this section; and (3) redeposits any contributions which had been withdrawn at the commencement of, or during, the period of the layoff.

This section shall not apply to any contracting agency nor to the employees of a contracting agency unless and until the agency elects to be subject to this section by contract or by amendment to its contract made in the manner prescribed for approval of contracts.

SEC. 3. Section 31657.1 is added to the Government Code, to read:

31657.1. Subject to Section 20569.4, whenever, as a result of the assumption by a county or district of firefighting or law enforcement functions performed by a city subject to the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2), any person who ceases to be employed by a city and who is employed by a county or district in which this chapter has become operative, that person shall become a member of the retirement association of a county immediately upon entrance to the county service. That member of the county retirement system shall be entitled to service credit in the county retirement system for the service for which he or she was entitled to credit in the Public Employees' Retirement System at the time of cessation of

employment by the city, without necessity of payment of any additional contributions in respect to that service, when and if all of the following occur:

(a) The board of retirement receives certification from the Board of Administration of the Public Employees' Retirement System of the service with which the person was entitled to be credited by the Public Employees' Retirement System at the time of cessation of his or her city employment.

(b) There is paid into the county retirement fund of the county, an amount equal to the normal contributions of the person to the Public Employees' Retirement System, together with the interest credited thereto, which amount shall be credited to the individual account of the member in the county retirement system, and shall thereafter for all purposes be deemed to be the member's contribution to the county retirement system with respect to the service so certified.

(c) There is paid to the retirement system of the county an amount equal to the contributions of the city made to the Public Employees' Retirement System on account of service rendered by the person together with interest credited to the city thereto.

(d) The board of retirement performs an actuarial analysis of the transactions required by this section and all related costs of the actuarial analysis shall be paid for by the city. Any liability identified by the actuarial analysis that is not covered by the revenues received by the county retirement fund pursuant to this section from the Public Employees' Retirement System shall be paid by the city in a manner acceptable to the board of retirement.

(e) The board of retirement approves all transactions required by this section.

This section shall apply only to a county of the 16th class, as defined by Section 20820, as amended by Chapter 1204 of the Statutes of 1971, and Section 20837, as amended by Chapter 1204 of the Statutes of 1971.

This section shall not be operative in a county until the board of supervisors, by resolution adopted by a majority vote, makes this section operative in the county.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

CHAPTER 685

An act relating to water, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Pursuant to subdivision (a) of Section 12879.4 of the Water Code, the Department of Water Resources may make loans from the 1988 Water Conservation Fund in accordance with the Water Conservation Bond Law of 1988 (Chapter 4.7 (commencing with Section 12879) of Part 6 of Division 6 of the Water Code), to the following agencies for the following purposes:

(a) Water conservation projects:

(1) Tuolumne Utilities District Soulsbyville Ditch piping project in Tuolumne County.

(2) South Tahoe Public Utility District water mainline replacement project in El Dorado County.

(3) Cabazon County Water District water conveyance line replacement project in Riverside County.

(4) City of Davis water meter retrofit program in Yolo County.

(5) Palm Ranch Irrigation District water main replacement project in Los Angeles County.

(6) Central Basin Municipal Water District/West Basin Municipal Water District low-income direct install (toilet retrofit) project in Los Angeles County.

(7) Linden County Water District Front Street mainline replacement project in San Joaquin County.

(8) Mammoth County Water District pipeline replacement project in Mono County.

(9) City of Porterville Pioneer Ditch piping project in Tulare County.

(10) Marina County Water District reclaimed water distribution system and pump station project in Monterey County.

(11) Armona Community Services District water line replacement and metering project in Kings County.

(b) Local water supply projects:

(1) City of Santa Maria state water transmission line in Santa Barbara County.

(2) Juniper Riviera County Water District water supply well and storage tank in San Bernardino County.

(3) Santa Ana Watershed Project Authority Chino basin desalination program in Riverside County.

(c) Groundwater recharge projects:

(1) Hi-desert Water District groundwater recharge feasibility study in San Bernardino County.

SEC. 2. The Department of Water Resources shall determine eligibility for, and the amount of, any loan authorized in Section 1 of this act, in accordance with the Water Conservation Bond Law of 1988 (Chapter 4.7 (commencing with Section 12879) of Part 6 of Division 6 of the Water Code) and may make those loans in accordance with that bond law.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to remedy critical water supply problems, thereby protecting the public health and safety, it is necessary that this act take effect immediately.

CHAPTER 686

An act to amend Section 5730 of the Business and Professions Code, to amend Sections 2924, 2924b, 2924c, 2924d, 2924f, and 2924g of, and to amend, repeal, and add Section 2934a of, the Civil Code, and to amend Sections 8206 and 8875.6 of the Government Code, relating to property.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 5730 of the Business and Professions Code is amended to read:

5730. No individual may act as an auctioneer and no person may operate an auction company unless that individual or person holds an unexpired and otherwise valid license issued pursuant to this chapter. However, the requirements of this chapter do not apply to any of the following:

(a) An auction of goods conducted by an individual who personally owns those goods and who did not acquire the goods for resale.

(b) An auction conducted by, on behalf of, or under the direction of, any public authority, political candidate or party, church, or charitable organization. However, if the individual conducting the sale receives compensation or, by advertising or otherwise, holds himself or herself out as being available to engage in the sale of goods at auction for compensation, that individual shall be required to hold a license pursuant to this chapter.

(c) A sale of real estate or a sale in any sequence of real estate with personal property or fixtures or both in a unified sale pursuant to subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code.

(d) An automobile auction regulated by the Department of Motor Vehicles. However, an individual acting as an auctioneer at the auto auction shall hold a license as required by this chapter, unless the auctioneer is licensed as a salesman by the Department of Motor Vehicles and is employed by the auto auction.

(e) An auction of livestock in any place designated by the Secretary of the United States Department of Agriculture as a stockyard pursuant to Section 202 of Chapter 9 of Title 7 of the United States Code. The exemption provided by this subdivision shall extend to individuals acting as auctioneers at the livestock auction only if the sale is conducted under the jurisdiction of the United States Department of Agriculture.

(f) An auction conducted by an owner, as defined in Section 21701, if the goods are being auctioned to enforce a lien, or a judgment entered on a lien in favor of the owner, on goods stored at a self-service storage facility, and the lien is obtained pursuant to Chapter 10 (commencing with Section 21700) of Division 8.

SEC. 2. Section 2924 of the Civil Code is amended to read:

2924. Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is to be deemed a pledge. Where, by a mortgage created after July 27, 1917, of any estate in real property, other than an estate at will or for years, less than two, or in any transfer in trust made after July 27, 1917, of a like estate to secure the performance of an obligation, a power of sale is conferred upon the mortgagee, trustee, or any other person, to be exercised after a breach of the obligation for which that mortgage or transfer is a security, the power shall not be exercised except where the mortgage or transfer is made pursuant to an order, judgment, or decree of a court of record, or to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations, or is made by a public utility subject to the provisions of the Public Utilities Act, until (a) the trustee, mortgagee, or beneficiary, or any of their authorized agents shall first file for record, in the office of the recorder of each county wherein the mortgaged or trust property or some part or parcel thereof is situated, a notice of default, identifying the mortgage or deed of trust by stating the name or names of the trustor or trustors and giving the book and page where the same is recorded or a description of the mortgaged or trust property and containing a statement that a breach of the obligation for which the mortgage or transfer in trust is security has occurred, and setting forth the nature of each breach actually known to the beneficiary and of his or her election to sell or cause to be sold the property to satisfy that obligation and any other obligation secured by the deed of trust or mortgage which is in default, and where the default is curable pursuant to Section 2924c, containing the statement specified in paragraph (1) of subdivision

(b) of Section 2924c; (b) not less than three months shall thereafter elapse; and (c) after the lapse of the three months the mortgagee, trustee or other person authorized to take the sale shall give notice of sale, stating the time and place thereof, in the manner and for a time not less than that set forth in Section 2924f. A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice. There is a rebuttable presumption that the beneficiary actually knew of all unpaid loan payments on the obligation owed to the beneficiary and secured by the deed of trust or mortgage subject to the notice of default. However, the failure to include an actually known default shall not invalidate the notice of sale and the beneficiary shall not be precluded from asserting a claim to this omitted default or defaults in a separate notice of default.

SEC. 3. Section 2924b of the Civil Code is amended to read:

2924b. (a) Any person desiring a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale upon real property or an estate for years therein, as to which deed of trust or mortgage the power of sale cannot be exercised until these notices are given for the time and in the manner provided in Section 2924 may, at any time subsequent to recordation of the deed of trust or mortgage and prior to recordation of notice of default thereunder, cause to be filed for record in the office of the recorder of any county in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of the notice of default and of sale. This request shall be signed and acknowledged by the person making the request, specifying the name and address of the person to whom the notice is to be mailed, shall identify the deed of trust or mortgage by stating the names of the parties thereto, the date of recordation thereof, and the book and page where the deed of trust or mortgage is recorded or the recorder's number, and shall be in substantially the following form:

"In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded _____, 19__, in Book _____ page _____ records of _____ County, (or filed for record with recorder's serial number _____, _____ County) California, executed by _____ as trustor (or mortgagor) in which _____, is named as beneficiary (or mortgagee) and _____ as trustee be mailed to

_____ at _____.

Name Address

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

Signature _____"

Upon the filing for record of the request, the recorder shall index in the general index of grantors the names of the trustors (or mortgagor) recited therein and the names of persons requesting copies.

(b) The mortgagee, trustee, or other person authorized to record the notice of default shall do each of the following:

(1) Within 10 business days following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(2) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(3) As used in paragraphs (1) and (2), the "last known address" of each trustor or mortgagor means the last business or residence address actually known by the mortgagee, beneficiary, trustee, or other person authorized to record the notice of default. The beneficiary shall inform the trustee of the trustor's last address actually known by the beneficiary. However, the trustee shall incur no liability for failing to send any notice to the last address unless the trustee has actual knowledge of it.

(c) The mortgagee, trustee, or other person authorized to record the notice of default shall do the following:

(1) Within one month following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person set forth in paragraph (2), provided that the estate or interest of any person entitled to receive notice under this subdivision is acquired by an instrument sufficient to impart constructive notice of the estate or interest in the land or portion thereof which is subject to the deed of trust or mortgage being foreclosed, and provided the instrument is recorded in the office of the county recorder so as to impart that constructive notice

prior to the recording date of the notice of default and provided the instrument as so recorded sets forth a mailing address which the county recorder shall use, as instructed within the instrument, for the return of the instrument after recording, and which address shall be the address used for the purposes of mailing notices herein.

(2) The persons to whom notice shall be mailed under this subdivision are:

(A) The successor in interest, as of the recording date of the notice of default, of the estate or interest or any portion thereof of the trustor or mortgagor of the deed of trust or mortgage being foreclosed.

(B) The beneficiary or mortgagee of any deed of trust or mortgage recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or a recorded statement of subordination to the deed of trust or mortgage being foreclosed.

(C) The assignee of any interest of the beneficiary or mortgagee described in subparagraph (B), as of the recording date of the notice of default.

(D) The vendee of any contract of sale, or the lessee of any lease, of the estate or interest being foreclosed which is recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or statement of subordination to the deed of trust or mortgage being foreclosed.

(E) The successor in interest to the vendee or lessee described in subparagraph (D), as of the recording date of the notice of default.

(F) The Office of the Controller, Sacramento, California, where, as of the recording date of the notice of default, a "Notice of Lien for Postponed Property Taxes" has been recorded against the real property to which the notice of default applies.

(3) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail, an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale addressed to each person to whom a copy of the notice of default is to be mailed as provided in paragraphs (1) and (2), and addressed to the office of any state taxing agency, Sacramento, California, which has recorded a notice of tax lien prior to the recording date of the notice of default against the real property to which the notice of default applies.

(4) The mailing of notices in the manner set forth in paragraph (1) shall not impose upon any licensed attorney, agent, or employee of any person entitled to receive notices as herein set forth any duty to communicate the notice to the entitled person from the fact that the mailing address used by the county recorder is the address of the attorney, agent, or employee.

(d) Any deed of trust or mortgage with power of sale hereafter executed upon real property or an estate for years therein may

contain a request that a copy of any notice of default and a copy of any notice of sale thereunder shall be mailed to any person or party thereto at the address of the person given therein, and a copy of any notice of default and of any notice of sale shall be mailed to each of these at the same time and in the same manner required as though a separate request therefor had been filed by each of these persons as herein authorized. If any deed of trust or mortgage with power of sale executed after September 19, 1939, except a deed of trust or mortgage of any of the classes excepted from the provisions of Section 2924, does not contain a request of the trustor or mortgagor for special notice at the address of the person given therein or does contain such a request but no address of the person is given therein and if no request for special notice by the trustor or mortgagor in substantially the form set forth in this section has subsequently been recorded, a copy of the notice of default shall be published once a week for at least four weeks in a newspaper of general circulation in the county in which the property is situated, the publication to commence within 10 business days after the filing of the notice of default. In lieu of publication, a copy of the notice of default may be delivered personally to the trustor or mortgagor within the 10 business days or at any time before publication is completed, or by posting the notice of default in a conspicuous place on the property and mailing the notice to the last known address of the trustor.

(e) Any person required to mail a copy of a notice of default or notice of sale to each trustor or mortgagor pursuant to subdivision (b) or (c) by registered or certified mail shall simultaneously cause to be deposited in the United States mail, with postage prepaid and mailed by first-class mail, an envelope containing an additional copy of the required notice addressed to each trustor or mortgagor at the same address to which the notice is sent by registered or certified mail pursuant to subdivision (b) or (c). The person shall execute and retain an affidavit identifying the notice mailed, showing the name and residence or business address of that person, that he or she is over the age of 18 years, the date of deposit in the mail, the name and address of the trustor or mortgagor to whom sent, and that the envelope was sealed and deposited in the mail with postage fully prepaid. In the absence of fraud, the affidavit required by this subdivision shall establish a conclusive presumption of mailing.

(f) No request for a copy of any notice filed for record pursuant to this section, no statement or allegation in the request, and no record thereof shall affect the title to real property or be deemed notice to any person that any person requesting copies of notice has or claims any right, title, or interest in, or lien or charge upon the property described in the deed of trust or mortgage referred to therein.

(g) "Business day," as used in this section, has the meaning specified in Section 9.

SEC. 4. Section 2924c of the Civil Code is amended to read:

2924c. (a) (1) Whenever all or a portion of the principal sum of

any obligation secured by deed of trust or mortgage on real property or an estate for years therein hereafter executed has, prior to the maturity date fixed in that obligation, become due or been declared due by reason of default in payment of interest or of any installment of principal, or by reason of failure of trustor or mortgagor to pay, in accordance with the terms of that obligation or of the deed of trust or mortgage, taxes, assessments, premiums for insurance, or advances made by beneficiary or mortgagee in accordance with the terms of that obligation or of the deed of trust or mortgage, the trustor or mortgagor or his or her successor in interest in the mortgaged or trust property or any part thereof, or any beneficiary under a subordinate deed of trust or any other person having a subordinate lien or encumbrance of record thereon, at any time within the period specified in subdivision (e), if the power of sale therein is to be exercised, or, otherwise at any time prior to entry of the decree of foreclosure, may pay to the beneficiary or the mortgagee or their successors in interest, respectively, the entire amount due, at the time payment is tendered, with respect to (A) all amounts of principal, interest, taxes, assessments, insurance premiums, or advances actually known by the beneficiary to be, and that are, in default and shown in the notice of default, under the terms of the deed of trust or mortgage and the obligation secured thereby, (B) all amounts in default on recurring obligations not shown in the notice of default, and (C) all reasonable costs and expenses, subject to subdivision (c), which are actually incurred in enforcing the terms of the obligation, deed of trust, or mortgage, and trustee's or attorney's fees, subject to subdivision (d), other than the portion of principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust or mortgage shall be reinstated and shall be and remain in force and effect, the same as if the acceleration had not occurred. This section does not apply to bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations or made by a public utility subject to the Public Utilities Code. For the purposes of this subdivision, the term "recurring obligation" means all amounts of principal and interest on the loan, or rents, subject to the deed of trust or mortgage in default due after the notice of default is recorded; all amounts of principal and interest or rents advanced on senior liens or leaseholds which are advanced after the recordation of the notice of default; and payments of taxes, assessments, and hazard insurance advanced after recordation of the notice of default. Where the beneficiary or mortgagee has made no advances on defaults which would constitute recurring obligations, the beneficiary or mortgagee may require the trustor or mortgagor to provide reliable written evidence that the amounts have been paid prior to reinstatement.

(2) If the trustor, mortgagor, or other person authorized to cure

the default pursuant to this subdivision does cure the default, the beneficiary or mortgagee or the agent for the beneficiary or mortgagee shall, within 21 days following the reinstatement, execute and deliver to the trustee a notice of rescission which rescinds the declaration of default and demand for sale and advises the trustee of the date of reinstatement. The trustee shall cause the notice of rescission to be recorded within 30 days of receipt of the notice of rescission and of all allowable fees and costs.

No charge, except for the recording fee, shall be made against the trustor or mortgagor for the execution and recordation of the notice which rescinds the declaration of default and demand for sale.

(b) (1) The notice, of any default described in this section, recorded pursuant to Section 2924, and mailed to any person pursuant to Section 2924b, shall begin with the following statement, printed or typed thereon:

"IMPORTANT NOTICE [14-point boldface type if printed or in capital letters if typed]

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, [14-point boldface type if printed or in capital letters if typed] and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is _____ as of _____,
(Date)

and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the

time the notice of sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

_____

(Name of beneficiary or mortgagee)

_____

(Mailing address)

_____

(Telephone)

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. [14-point boldface type if printed or in capital letters if typed]"

Unless otherwise specified, the notice, if printed, shall appear in at least 12-point boldface type.

If the obligation secured by the deed of trust or mortgage is a contract or agreement described in paragraph (1) or (4) of subdivision (a) of Section 1632, the notice required herein shall be in Spanish if the trustor requested a Spanish language translation of the contract or agreement pursuant to Section 1632. If the obligation secured by the deed of trust or mortgage is contained in a home improvement contract, as defined in Sections 7151.2 and 7159 of the Business and Professions Code, which is subject to Title 2 (commencing with Section 1801), the seller shall specify on the contract whether or not the contract was principally negotiated in Spanish and if the contract was principally negotiated in Spanish, the notice required herein shall be in Spanish. No assignee of the contract or person authorized to record the notice of default shall incur any obligation or liability for failing to mail a notice in Spanish unless Spanish is specified in the contract or the assignee or person has actual knowledge that the secured obligation was principally negotiated in Spanish. Unless specified in writing to the contrary, a

copy of the notice required by subdivision (c) of Section 2924b shall be in English.

(2) Any failure to comply with the provisions of this subdivision shall not affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value and without notice.

(c) Costs and expenses which may be charged pursuant to Sections 2924 to 2924i, inclusive, shall be limited to the costs incurred for recording, mailing, publishing, and posting notices required by Sections 2924 to 2924i, inclusive, postponement upon the written request of the trustor pursuant to Section 2924g made to either the beneficiary or trustee not to exceed fifty dollars ($50) per postponement and a fee for a trustee's sale guarantee or, in the event of judicial foreclosure, a litigation guarantee.

(d) Trustee's or attorney's fees which may be charged pursuant to subdivision (a), or until the notice of sale is deposited in the mail to the trustor as provided in Section 2924b, if the sale is by power of sale contained in the deed of trust or mortgage, or, otherwise at any time prior to the decree of foreclosure, are hereby authorized to be in an amount which does not exceed two hundred forty dollars ($240) with respect to any portion of the unpaid principal sum secured which is fifty thousand dollars ($50,000) or less, plus one-half of 1 percent of the unpaid principal sum secured exceeding fifty thousand dollars ($50,000) up to and including one hundred fifty thousand dollars ($150,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars ($150,000) up to and including five hundred thousand dollars ($500,000), plus one-eighth of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars ($500,000). Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where the charge does not exceed the amounts authorized herein.

(e) Reinstatement of a monetary default under the terms of an obligation secured by a deed of trust, or mortgage may be made at any time within the period commencing with the date of recordation of the notice of default until five business days prior to the date of sale set forth in the initial recorded notice of sale.

In the event the sale does not take place on the date set forth in the initial recorded notice of sale or a subsequent recorded notice of sale is required to be given, the right of reinstatement shall be revived as of the date of recordation of the subsequent notice of sale, and shall continue from that date until five business days prior to the date of sale set forth in the subsequently recorded notice of sale.

In the event the date of sale is postponed on the date of sale set forth in either an initial or any subsequent notice of sale, or is postponed on the date declared for sale at an immediately preceding postponement of sale, and, the postponement is for a period which exceeds five business days from the date set forth in the notice of sale, or declared at the time of postponement, then the right of reinstatement is revived as of the date of postponement and shall

continue from that date until five business days prior to the date of sale declared at the time of the postponement.

Nothing contained herein shall give rise to a right of reinstatement during the period of five business days prior to the date of sale, whether the date of sale is noticed in a notice of sale or declared at a postponement of sale.

Pursuant to the terms of this subdivision, no beneficiary, trustee, mortgagee, or their agents or successors shall be liable in any manner to a trustor, mortgagor, their agents or successors for the failure to allow a reinstatement of the obligation secured by a deed of trust or mortgage during the period of five business days prior to the sale of the security property, and no such right of reinstatement during this period is created by this section. Any right of reinstatement created by this section is terminated five business days prior to the date of sale set forth in the initial date of sale, and is revived only as prescribed herein and only as of the date set forth herein.

As used in this subdivision, the term "business day" has the same meaning as specified in Section 9.

SEC. 5. Section 2924d of the Civil Code is amended to read:

2924d. (a) Commencing with the date that the notice of sale is deposited in the mail, as provided in Section 2924b, and until the property is sold pursuant to the power of sale contained in the mortgage or deed of trust, a beneficiary, trustee, mortgagee, or his or her agent or successor in interest, may demand and receive from a trustor, mortgagor, or his or her agent or successor in interest, or any beneficiary under a subordinate deed of trust, or any other person having a subordinate lien or encumbrance of record those reasonable costs and expenses, to the extent allowed by subdivision (c) of Section 2924c, which are actually incurred in enforcing the terms of the obligation and trustee's or attorney's fees which are hereby authorized to be in an amount which does not exceed three hundred fifty dollars ($350) with respect to any portion of the unpaid principal sum secured which is fifty thousand dollars ($50,000) or less, plus 1 percent of any portion of the unpaid principal sum secured exceeding fifty thousand dollars ($50,000) up to and including one hundred fifty thousand dollars ($150,000), plus one-half of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars ($150,000) up to and including five hundred thousand dollars ($500,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars ($500,000). Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where that charge does not exceed the amounts authorized herein. Any charge for trustee's or attorney's fees made pursuant to the provisions of this subdivision shall be in lieu of and not in addition to those charges authorized by subdivision (d) of Section 2924c.

(b) Upon the sale of property pursuant to a power of sale, a trustee, or his or her agent or successor in interest, may demand and

receive from a beneficiary, or his or her agent or successor in interest, or may deduct from the proceeds of the sale, those reasonable costs and expenses, to the extent allowed by subdivision (c) of Section 2924c, which are actually incurred in enforcing the terms of the obligation and trustee's or attorney's fees which are hereby authorized to be in an amount which does not exceed three hundred fifty dollars ($350) or one percent of the unpaid principal sum secured, whichever is greater. Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where that charge does not exceed the amount authorized herein. Any charges for trustee's or attorney's fees made pursuant to the provisions of this subdivision shall be in lieu of and not in addition to those charges authorized by subdivision (a) of this section and subdivision (d) of Section 2924c.

(c) (1) No person shall pay or offer to pay or collect any rebate or kickback for the referral of business involving the performance of any act required by this article.

(2) Any person who violates this subdivision shall be liable to the trustor for three times the amount of any rebate or kickback, plus reasonable attorney's fees and costs, in addition to any other remedies provided by law.

(3) No violation of this subdivision shall affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value without notice.

(d) It shall not be unlawful for a trustee to pay or offer to pay a fee to an agent or subagent of the trustee for work performed by the agent or subagent in discharging the trustee's obligations under the terms of the deed of trust. Any payment of a fee by a trustee to an agent or subagent of the trustee for work performed by the agent or subagent in discharging the trustee's obligations under the terms of the deed of trust shall be conclusively presumed to be lawful and valid if the fee, when combined with other fees of the trustee, does not exceed in the aggregate the trustee's fee authorized by subdivision (d) of Section 2924c or subdivision (a) or (b) of this section.

(e) When a court issues a decree of foreclosure, it shall have discretion to award attorney's fees, costs, and expenses as are reasonable, if provided for in the note, deed of trust, or mortgage, pursuant to Section 580c of the Code of Civil Procedure.

SEC. 6. Section 2924f of the Civil Code is amended to read:

2924f. (a) As used in this section and Sections 2924g and 2924h "property" means real property or a leasehold estate therein.

(b) (1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the

property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which the property is to be sold, and publishing a copy once a week for the same period, in a newspaper of general circulation published in the city in which the property or some part thereof is situated, if any part thereof is situated in a city, if not, then in a newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district, as the case may be, in a newspaper of general circulation published in the county in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district or county, as the case may be, in a newspaper of general circulation published in the county in this state that (A) is contiguous to the county in which the property or some part thereof is situated and (B) has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. A copy of the notice of sale shall also be posted in a conspicuous place on the property to be sold at least 20 days before the date of sale, where possible and where not restricted for any reason. If the property is a single-family residence the posting shall be on a door of the residence, but, if not possible or restricted, then the notice shall be posted in a conspicuous place on the property; however, if access is denied because a common entrance to the property is restricted by a guard gate or similar impediment, the property may be posted at that guard gate or similar impediment to any development community. Additionally, the notice of sale shall conform to the minimum requirements of Section 6043 of the Government Code and be recorded with the county recorder of the county in which the property or some part thereof is situated at least 14 days prior to the date of sale. The notice of sale shall contain the name, street address, and telephone number of the trustee or other person conducting the sale, and the name of the original trustor, and also shall contain the statement required by paragraph (3) of subdivision (c). In addition to any other description of the property, the notice shall describe the property by giving its street address, if any, or other common designation, if any; but if the property has no street address or other common designation, the notice shall contain the name and address of the beneficiary at whose request the sale is to be conducted and a statement that directions may be obtained pursuant to a written request submitted to the beneficiary within 10 days from the first publication of the notice. Directions shall be deemed reasonably sufficient to locate the property if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If a legal description of the property is given, the validity of the

notice and the validity of the sale shall not be affected by the fact that the street address, other common designation, name and address of the beneficiary, or the directions obtained therefrom are erroneous or that the street address, other common designation, name and address of the beneficiary, county assessor's parcel number, or directions obtained therefrom are omitted. The term newspaper of general circulation as used in this section has the same meaning as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code.

The notice of sale shall contain a statement of the total amount of the unpaid balance of the obligation secured by the property to be sold and reasonably estimated costs, expenses, advances at the time of the initial publication of the notice of sale, and, if republished pursuant to a cancellation of a cash equivalent pursuant to subdivision (d) of Section 2924h, a reference of that fact; provided, that the trustee shall incur no liability for any good faith error in stating the proper amount. An inaccurate statement of this amount shall not affect the validity of any sale to a bona fide purchaser for value, nor shall the failure to post the notice of sale on a door as provided by this subdivision affect the validity of any sale to a bona fide purchaser for value.

(2) If the sale of the property is to be a unified sale as provided in subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, the notice of sale shall also contain a description of the personal property or fixtures to be sold. In the case where it is contemplated that all of the personal property or fixtures are to be sold, the description in the notice of the personal property or fixtures shall be sufficient if it is the same as the description of the personal property or fixtures contained in the agreement creating the security interest in or encumbrance on the personal property or fixtures or the filed financing statement relating to the personal property or fixtures. In all other cases, the description in the notice shall be sufficient if it would be a sufficient description of the personal property or fixtures under Section 9110 of the Commercial Code. Inclusion of a reference to or a description of personal property or fixtures in a notice of sale hereunder shall not constitute an election by the secured party to conduct a unified sale pursuant to subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, shall not obligate the secured party to conduct a unified sale pursuant to subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, and in no way shall render defective or noncomplying either that notice or a sale pursuant to that notice by reason of the fact that the sale includes none or less than all of the personal property or fixtures referred to or described in the notice. This paragraph shall not otherwise affect the obligations or duties of a secured party under the Commercial Code.

(c) (1) This subdivision applies only to deeds of trust or mortgages which contain a power of sale and which are secured by

real property containing a single-family, owner-occupied residence, where the obligation secured by the deed of trust or mortgage is contained in a contract for goods or services subject to the provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

(2) Except as otherwise expressly set forth in this subdivision, all other provisions of law relating to the exercise of a power of sale shall govern the exercise of a power of sale contained in a deed of trust or mortgage described in paragraph (1).

(3) If any default of the obligation secured by a deed of trust or mortgage described in paragraph (1) has not been cured within 30 days after the recordation of the notice of default, the trustee or mortgagee shall mail to the trustor or mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A

_____,

(Deed of trust or mortgage)

DATED _____. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

(4) All sales of real property pursuant to a power of sale contained in any deed of trust or mortgage described in paragraph (1) shall be held in the county where the residence is located and shall be made to the person making the highest offer. The trustee may receive offers during the 10-day period immediately prior to the date of sale and if any offer is accepted in writing by both the trustor or mortgagor and the beneficiary or mortgagee prior to the time set for sale, the sale shall be postponed to a date certain and, prior to which the property may be conveyed by the trustor to the person making the offer according to its terms. The offer is revocable until accepted. The performance of the offer following acceptance, according to its terms by a conveyance of the property to the offeror shall operate to terminate any further proceeding under the notice of sale and it shall be deemed revoked.

(5) In addition to the trustee fee pursuant to Section 2924c, the trustee or mortgagee pursuant to a deed of trust or mortgage subject to this subdivision shall be entitled to charge an additional fee of fifty dollars ($50).

(6) This subdivision applies only to property on which notices of default were filed on or after the effective date of this subdivision.

SEC. 6.5. Section 2924f of the Civil Code is amended to read:

2924f. (a) As used in this section and Sections 2924g and 2924h, "property" means real property or a leasehold estate therein.

(b) (1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed

of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which the property is to be sold, and publishing a copy once a week for the same period, in a newspaper of general circulation published in the city in which the property or some part thereof is situated, if any part thereof is situated in a city, if not, then in a newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district, as the case may be, in a newspaper of general circulation published in the county in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district or county, as the case may be, in a newspaper of general circulation published in the county in this state that (A) is contiguous to the county in which the property or some part thereof is situated and (B) has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. A copy of the notice of sale shall also be posted in a conspicuous place on the property to be sold at least 20 days before the date of sale, where possible and where not restricted for any reason. If the property is a single-family residence the posting shall be on a door of the residence, but, if not possible or restricted, then the notice shall be posted in a conspicuous place on the property; however, if access is denied because a common entrance to the property is restricted by a guard gate or similar impediment, the property may be posted at that guard gate or similar impediment to any development community. Additionally, the notice of sale shall conform to the minimum requirements of Section 6043 of the Government Code and be recorded with the county recorder of the county in which the property or some part thereof is situated at least 14 days prior to the date of sale. The notice of sale shall contain the name, street address, and telephone number of the trustee or other person conducting the sale, and the name of the original trustor, and also shall contain the statement required by paragraph (3) of subdivision (c). In addition to any other description of the property, the notice shall describe the property by giving its street address, if any, or other common designation, if any, and a county assessor's parcel number ; but if the property has no street address or other common designation, the notice shall contain a legal description of the property, the name and address of the beneficiary at whose request the sale is to be conducted, and a statement that directions may be obtained

pursuant to a written request submitted to the beneficiary within 10 days from the first publication of the notice. Directions shall be deemed reasonably sufficient to locate the property if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If a legal description or a county assessor's parcel number and either a street address or another common designation of the property is given, the validity of the notice and the validity of the sale shall not be affected by the fact that the street address, other common designation, name and address of the beneficiary, or the directions obtained therefrom are erroneous or that the street address, other common designation, name and address of the beneficiary, or directions obtained therefrom are omitted. The term "newspaper of general circulation," as used in this section, has the same meaning as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code.

The notice of sale shall contain a statement of the total amount of the unpaid balance of the obligation secured by the property to be sold and reasonably estimated costs, expenses, advances at the time of the initial publication of the notice of sale, and, if republished pursuant to a cancellation of a cash equivalent pursuant to subdivision (d) of Section 2924h, a reference of that fact; provided, that the trustee shall incur no liability for any good faith error in stating the proper amount. An inaccurate statement of this amount shall not affect the validity of any sale to a bona fide purchaser for value, nor shall the failure to post the notice of sale on a door as provided by this subdivision affect the validity of any sale to a bona fide purchaser for value.

(2) If the sale of the property is to be a unified sale as provided in subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, the notice of sale shall also contain a description of the personal property or fixtures to be sold. In the case where it is contemplated that all of the personal property or fixtures are to be sold, the description in the notice of the personal property or fixtures shall be sufficient if it is the same as the description of the personal property or fixtures contained in the agreement creating the security interest in or encumbrance on the personal property or fixtures or the filed financing statement relating to the personal property or fixtures. In all other cases, the description in the notice shall be sufficient if it would be a sufficient description of the personal property or fixtures under Section 9110 of the Commercial Code. Inclusion of a reference to or a description of personal property or fixtures in a notice of sale hereunder shall not constitute an election by the secured party to conduct a unified sale pursuant to subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, shall not obligate the secured party to conduct a unified sale pursuant to subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, and in no way shall render defective or noncomplying either that notice or a

sale pursuant to that notice by reason of the fact that the sale includes none or less than all of the personal property or fixtures referred to or described in the notice. This paragraph shall not otherwise affect the obligations or duties of a secured party under the Commercial Code.

(c) (1) This subdivision applies only to deeds of trust or mortgages which contain a power of sale and which are secured by real property containing a single-family, owner-occupied residence, where the obligation secured by the deed of trust or mortgage is contained in a contract for goods or services subject to the provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

(2) Except as otherwise expressly set forth in this subdivision, all other provisions of law relating to the exercise of a power of sale shall govern the exercise of a power of sale contained in a deed of trust or mortgage described in paragraph (1).

(3) If any default of the obligation secured by a deed of trust or mortgage described in paragraph (1) has not been cured within 30 days after the recordation of the notice of default, the trustee or mortgagee shall mail to the trustor or mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A

_____,

(Deed of trust or mortgage)

DATED _____. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

(4) All sales of real property pursuant to a power of sale contained in any deed of trust or mortgage described in paragraph (1) shall be held in the county where the residence is located and shall be made to the person making the highest offer. The trustee may receive offers during the 10-day period immediately prior to the date of sale and if any offer is accepted in writing by both the trustor or mortgagor and the beneficiary or mortgagee prior to the time set for sale, the sale shall be postponed to a date certain and prior to which the property may be conveyed by the trustor to the person making the offer according to its terms. The offer is revocable until accepted. The performance of the offer, following acceptance, according to its terms, by a conveyance of the property to the offeror, shall operate to terminate any further proceeding under the notice of sale and it shall be deemed revoked.

(5) In addition to the trustee fee pursuant to Section 2924c, the trustee or mortgagee pursuant to a deed of trust or mortgage subject to this subdivision shall be entitled to charge an additional fee of fifty dollars ($50).

(6) This subdivision applies only to property on which notices of default were filed on or after the effective date of this subdivision.

SEC. 7. Section 2924g of the Civil Code is amended to read:

2924g. (a) All sales of property under the power of sale contained in any deed of trust or mortgage shall be held in the county where the property or some part thereof is situated, and shall be made at auction, to the highest bidder, between the hours of 9 a.m. and 5 p.m. on any business day, Monday through Friday.

The sale shall commence at the time and location specified in the notice of sale. Any postponement shall be announced at the time and location specified in the notice of sale for commencement of the sale or pursuant to paragraph (1) of subdivision (c).

If the sale of more than one parcel of real property has been scheduled for the same time and location by the same trustee, (1) any postponement of any of the sales shall be announced at the time published in the notice of sale, (2) the first sale shall commence at the time published in the notice of sale or immediately after the announcement of any postponement, and (3) each subsequent sale shall take place as soon as possible after the preceding sale has been completed.

(b) When the property consists of several known lots or parcels they shall be sold separately unless the deed of trust or mortgage provides otherwise. When a portion of the property is claimed by a third person, who requires it to be sold separately, the portion subject to the claim may be thus sold. The trustor, if present at the sale, may also, unless the deed of trust or mortgage otherwise provides, direct the order in which property shall be sold, when the property consists of several known lots or parcels which may be sold to advantage separately, and the trustee shall follow that direction. After sufficient property has been sold to satisfy the indebtedness no more can be sold.

If the property under power of sale is in two or more counties the public auction sale of all of the property under the power of sale may take place in any one of the counties where the property or a portion thereof is located.

(c) (1) There may be a postponement of the sale proceedings at any time prior to the completion of the sale at the discretion of the trustee, or upon instruction by the beneficiary to the trustee that the sale proceedings be postponed.

There may be a maximum of three postponements of the sale proceedings pursuant to this subdivision. In the event that the sale proceedings are postponed three times, the scheduling of any further sale proceedings shall be preceded by the giving of a new notice of sale in the manner prescribed by Section 2924f.

(2) The trustee shall postpone the sale upon the order of any court of competent jurisdiction, or where stayed by operation of law, or by the mutual agreement, whether oral or in writing, of any trustor and any beneficiary or any mortgagor and any mortgagee. Any postponement pursuant to this paragraph shall not be a

postponement for purposes of determining the maximum number of postponements permitted pursuant to this subdivision nor shall a postponement resulting from the prohibition upon a sale within seven days from the expiration of an injunction, restraining order, or stay as provided in subdivision (d) be deemed a postponement for purposes of this subdivision. In addition, one postponement by the trustee based upon a reasonable belief that a petition for bankruptcy has been filed shall not be a postponement for purposes of determining the maximum number of postponements permitted pursuant to this subdivision.

(d) The notice of each postponement and the reason therefor shall be given by public declaration by the trustee at the time and place last appointed for sale. A public declaration of postponement shall also set forth the new date, time, and place of sale and the place of sale shall be the same place as originally fixed by the trustee for the sale. No other notice of postponement need be given. However, the sale shall be conducted no sooner than seven days after the earlier of (1) dismissal of the action or (2) expiration or termination of the injunction, restraining order, or stay (which required postponement of the sale), whether by entry of an order by a court of competent jurisdiction, operation of law, or otherwise, unless the injunction, restraining order, or subsequent order expressly directs the conduct of the sale within that seven-day period. If the sale had been scheduled to occur, but this subdivision precludes its conduct during that seven-day period, a new notice of postponement shall be given if the sale had been scheduled to occur during that seven-day period. The trustee shall maintain records of each postponement and the reason therefor.

SEC. 8. Section 2934a of the Civil Code is amended to read:

2934a. (a) (1) The trustee under a trust deed upon real property or an estate for years therein given to secure an obligation to pay money and conferring no other duties upon the trustee than those which are incidental to the exercise of the power of sale therein conferred, may be substituted by the recording in the county in which the property is located of a substitution executed and acknowledged by all of the beneficiaries under the trust deed, or their successors in interest, and the substitution shall be effective notwithstanding any contrary provision in any trust deed executed on or after January 1, 1968.

(2) The substitution shall contain the date of recordation of the trust deed, the name of the trustor, the book and page where the trust deed is recorded and the name of the new trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority, and title granted and delegated to the trustee named in the deed of trust. A substitution may be accomplished with respect to multiple deeds of trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary or beneficiaries by recording a single document, complying with the

requirements of this section, substituting trustees for all those deeds of trust.

(3) As an alternative, a substitution may be accomplished with respect to multiple deeds of trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary, or beneficiaries, by recording a single document without the necessity of (1) setting forth the names of all trustors and (2) the recording of the dates for all the deeds of trust for which a substitution of trustee is being made. However, no notice of default shall be valid unless a substitution complying with paragraph (2) has first been recorded.

(b) If the substitution is effected after a notice of default has been recorded but prior to the recording of the notice of sale, the beneficiary or beneficiaries shall cause a copy of the substitution to be mailed, prior to the recording thereof, in the manner provided in Section 2924b, to the trustee then of record and to all persons to whom a copy of the notice of default would be required to be mailed by the provisions of Section 2924b. An affidavit shall be attached to the substitution that notice has been given to those persons and in the manner required by this subdivision.

(c) Notwithstanding any provision of this section or any provision in any deed of trust, unless a new notice of sale containing the name, street address, and telephone number of the substituted trustee is given pursuant to Section 2924f, any sale conducted by the substituted trustee shall be void.

SEC. 8.2. Section 2934a of the Civil Code is amended to read:

2934a. (a) (1) The trustee under a trust deed upon real property or an estate for years therein given to secure an obligation to pay money and conferring no other duties upon the trustee than those which are incidental to the exercise of the power of sale therein conferred, may be substituted by the recording in the county in which the property is located of a substitution executed and acknowledged by all of the beneficiaries under the trust deed, or their successors in interest, and the substitution shall be effective notwithstanding any contrary provision in any trust deed executed on or after January 1, 1968.

(2) The substitution shall contain the date of recordation of the trust deed, the name of the trustor, the book and page or instrument number where the trust deed is recorded, and the name of the new trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority, and title granted and delegated to the trustee named in the deed of trust. A substitution may be accomplished, with respect to multiple deeds of trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary or beneficiaries, by recording a single document, complying with the requirements of this section, substituting trustees for all those deeds of trust.

(3) As an alternative, a substitution may be accomplished with

respect to multiple deeds of trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary, or beneficiaries, by recording a single document without the necessity of (A) setting forth the names of all trustors and (B) the recording information and dates of recording for all the deeds of trust for which a substitution of trustee is being made. However, no notice of default shall be valid unless a substitution complying with paragraph (2) has first been recorded.

(b) If the substitution is effected after a notice of default has been recorded but prior to the recording of the notice of sale, the beneficiary or beneficiaries shall cause a copy of the substitution to be mailed, prior to the recording thereof, in the manner provided in Section 2924b, to the trustee then of record and to all persons to whom a copy of the notice of default would be required to be mailed by the provisions of Section 2924b. An affidavit shall be attached to the substitution that notice has been given to those persons and in the manner required by this subdivision.

(c) Notwithstanding any provision of this section or any provision in any deed of trust, unless a new notice of sale containing the name, street address, and telephone number of the substituted trustee is given pursuant to Section 2924f, any sale conducted by the substituted trustee shall be void.

(d) This section shall remain in effect only until January 1, 1998, and shall have no force or effect on or after that date, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 8.4. Section 2934a is added to the Civil Code, to read:

2934a. (a) (1) The trustee under a trust deed upon real property or an estate for years therein given to secure an obligation to pay money and conferring no other duties upon the trustee than those which are incidental to the exercise of the power of sale therein conferred, may be substituted by the recording in the county in which the property is located of a substitution executed and acknowledged by all of the beneficiaries under the trust deed, or their successors in interest, and the substitution shall be effective notwithstanding any contrary provision in any trust deed executed on or after January 1, 1968.

(2) The substitution shall contain the date of recordation of the trust deed, the name of the trustor, the book and page or instrument number where the trust deed is recorded, and the name of the new trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority, and title granted and delegated to the trustee named in the deed of trust. A substitution may be accomplished, with respect to multiple deeds of trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary or beneficiaries, by recording a single document, complying with the requirements of this section, substituting trustees for all those deeds of trust.

(3) As an alternative, a substitution may be accomplished with respect to multiple deeds of trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary or beneficiaries, by recording a single document without the necessity of (A) setting forth the names of all trustors and (B) the recording of the dates for all the deeds of trust for which a substitution of trustee is being made. However, no notice of default shall be valid unless a substitution complying with paragraph (2) has first been recorded.

(b) If the substitution is effected after a notice of default has been recorded but prior to the recording of the notice of sale, the beneficiary or beneficiaries shall cause a copy of the substitution to be mailed, prior to the recording thereof, in the manner provided in Section 2924b, to the trustee then of record and to all persons to whom a copy of the notice of default would be required to be mailed by the provisions of Section 2924b. An affidavit shall be attached to the substitution that notice has been given to those persons and in the manner required by this subdivision.

(c) Notwithstanding any provision of this section or any provision in any deed of trust, unless a new notice of sale containing the name, street address, and telephone number of the substituted trustee is given pursuant to Section 2924f, any sale conducted by the substituted trustee shall be void.

(d) This section shall become operative on January 1, 1998.

SEC. 9. Section 8206 of the Government Code is amended to read:

8206. A notary public shall keep a sequential journal of all official acts performed as a notary public. The journal shall be in addition to and apart from any copies of notarized documents which may be in the possession of the notary public and shall include:

(a) Date, time, and type of each official act.

(b) Character of every instrument acknowledged or proved before the notary.

(c) The signature of each person whose signature is being notarized.

(d) A statement as to whether the identity of a person making an acknowledgment was based on personal knowledge or satisfactory evidence. If identity was established by satisfactory evidence pursuant to Section 1185 of the Civil Code, then the journal shall contain the signature of the credible witness swearing or affirming to the identity of the individual or the type of identifying document, the governmental agency issuing the document, the serial or identifying number of the document, and the date of issue or expiration of the document.

(e) If the identity of the person making the acknowledgment was established by the oaths or affirmations of two credible witnesses whose identities are proven upon the presentation of satisfactory evidence, the type of identifying documents, the identifying numbers of the documents and the dates of issuance or expiration of

the documents presented by the witnesses to establish their identity.

(f) The fee charged for the notarial service.

(g) If the document to be notarized is a deed, quitclaim deed, or deed of trust affecting real property within the County of Los Angeles, the notary public shall require the party signing the document to place his or her right thumbprint in the journal. If the right thumbprint is not available, then the notary shall have the party use his or her left thumb, or any available finger and shall so indicate in the journal. If the party signing the document is physically unable to provide a thumbprint or fingerprint, the notary shall so indicate in the journal and shall also provide an explanation of that physical condition. This subdivision shall not apply to a trustee's deed resulting from a decree of foreclosure or a nonjudicial foreclosure pursuant to Section 2924 of the Civil Code, nor to a deed of reconveyance.

Upon written request of any member of the public, which request shall include the name of the parties, the type of document, and the month and year in which notarized, the notary shall supply a photostatic copy of the line item representing the requested transaction at a cost of not more than thirty cents ($0.30) per page.

This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 10. Section 8875.6 of the Government Code is amended to read:

8875.6. On and after January 1, 1993, the transferor, or his or her agent, of any unreinforced masonry building with wood frame floors or roofs, built before January 1, 1975, which is located within any county or city shall, as soon as practicable before the sale, transfer, or exchange, deliver to the purchaser a copy of the Commercial Property Owner's Guide to Earthquake Safety described in Section 10147 of the Business and Professions Code. This section shall not apply to any transfer described in Section 8893.3.

SEC. 11. Section 1 of this bill shall not become operative if (1) both AB 259 and this bill are enacted and become effective on January 1, 1994, (2) each bill affects Section 5730 of the Business and Professions Code, and (3) this bill is enacted after AB 259.

SEC. 12. Section 6.5 of this bill incorporates amendments to Section 2924f of the Civil Code proposed by both this bill and AB 1196. It shall become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 2924f of the Civil Code, and (3) this bill is enacted after AB 1196, in which case Section 6 of this bill shall not become operative.

SEC. 13. Sections 8.2 and 8.4 of this bill incorporate changes to Section 2934a of the Civil Code proposed by both this bill and SB 313. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill affects Section 2934a of the Civil Code, and (3) this bill is enacted after SB 313, in which case Section 2934a of the Civil Code, as amended by SB

313, shall remain operative only until the operative date of this bill, at which time Sections 8.2 and 8.4 of this bill shall become effective, and Section 8 of this bill and Section 2 of SB 313 shall not become operative.

CHAPTER 687

An act to add Section 21322 to the Public Contract Code, relating to water districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 21322 is added to the Public Contract Code, to read:

21322. Notwithstanding the provisions of Section 21321, contracts may be let for work without advertising in cases of significant emergency as determined by the board. Cases of significant emergency include, but are not limited to:

(1) States of emergency as specified in Section 8558 of the Government Code.

(2) When emergency repair or replacement is necessary to permit the continued operation or service of the agency.

(3) When the emergency work is necessary to avoid danger to life or property.

Any action taken under this section must be authorized by a unanimous vote of the board members present. Additionally, the board must find, based on substantial evidence set forth in the minutes of its meeting, that the emergency work is necessary for the stated reasons.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

At the earliest possible time, in order to ensure the district's ability to deal quickly and effectively with emergency situations, which often arise without warning, and to preserve the public safety, it is necessary that this act take effect immediately.

CHAPTER 688

An act to add and repeal Chapter 7.5 (commencing with Section 56840) of Part 30 of the Education Code, and to add and repeal Chapter 6.3 (commencing with Section 18360) of Part 6 of Division 9 of the Welfare and Institutions Code, relating to minors, and making an appropriation therefor.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares the following:

(1) There is a need for the treatment of severely emotionally disturbed children who are currently placed in Napa State Hospital, to enable them to make the transition from an intensive, highly structured residential treatment setting to permanent family reunification, adoption, long-term foster care placement, or other less restrictive settings.

(2) While children placed in Napa State Hospital programs often make substantial progress during their period of treatment in the program, followup studies of children discharged from intensive residential treatment indicate that many of them experience multiple placement failures and may, therefore, be destined for placement in some form of long-term institutional care.

(3) The Legislative Analyst's office reports in its analysis of the Budget Act of 1993 that nonpublic school costs have risen 311 percent in the past eight years, and that nonpublic school enrollment has risen by 130 percent in that same period, compared to a 37 percent growth in special education enrollments. Its review also indicated that the nonpublic school program funding system creates fiscal incentives for school districts to place students with disabilities, especially those who are expensive to serve, in nonpublic schools.

(4) Currently, 85 to 90 percent of children being discharged from Napa State Hospital are being placed into costly, highly restrictive group homes with required attendance in onsite nonpublic schools, even though most children successfully attend public schools during at least part of their residence at Napa State Hospital.

(5) Although it is generally recognized that most children benefit from education and residence in the least restrictive environment, many of the children discharged from Napa State Hospital are placed in accordance with the availability of existing services rather than according to the individual child's need.

(6) There is a need for educational and residential placements that are both normative and community-based, yet provide adequate support to maintain seriously emotionally disturbed children.

(b) It is the intent of the Legislature to authorize the

development of a pilot project creating intensive treatment foster care and supported public school placement options for children with serious emotional disturbance that will more successfully do the following:

(1) Provide for the transition of children from institutional programs to more permanent, noninstitutional placements through individualized interagency collaboration, preplacement program planning, and postplacement followup and support.

(2) Maintain children in these less restrictive placements, with reduced recidivism to more costly and restrictive group home and nonpublic school settings.

(3) Demonstrate significant cost avoidance relative to the high costs of current placements.

SEC. 2. Chapter 7.5 (commencing with Section 56840) is added to Part 30 of the Education Code, to read:

CHAPTER 7.5. EMOTIONALLY DISTURBED CHILDREN PILOT PROJECT

56840. (a) A school district or county office of education may provide educational and supportive services under this chapter to pupils eligible under subdivision (b).

(b) For the purposes of this chapter and subject to Section 56845.1, "eligible pupil" means a child specified as eligible under this part who meets the following criteria:

(1) The child is eligible for special education services under the Individuals with Disabilities Education Act (Public Law 101-476).

(2) The child has been determined to be seriously emotionally disturbed, as defined in Section 300.5 of Title 34 of the Code of Federal Regulations.

(3) The child has, as a result of his or her emotional disturbance, been placed in the Program for Children and Youth at Napa State Hospital, has successfully met his or her treatment goals, is not at risk of requiring restraint, and is being discharged from the Program for Children and Youth.

(4) The child is eligible for out-of-home care upon discharge from the Program for Children and Youth, in accordance with one or both of the following:

(A) The child is eligible for services under Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(B) The child is otherwise eligible for Aid to Families with Dependent Children-Foster Care benefits in accordance with Article 5 (commencing with Section 11400) of Chapter 2 of Part 3 of, and Chapter 6 (commencing with Section 18350) of Part 6 of, Division 9 of the Welfare and Institutions Code.

(5) The child has been determined by an interagency review team, as defined in Section 56840.1, to be eligible for participation in this pilot project.

A determination of eligibility for services under this chapter shall be made in accordance with Section 56840.1.

(c) For the purposes of this chapter, unless the context requires otherwise, "county" means the county of the child's parents' residence, or the county otherwise responsible for the child's residential placement and case management.

56840.1. (a) A child's eligibility for services under this pilot project shall be determined by a meeting of the child's interagency review team, which shall include, but not be limited to, the following persons:

(1) The child's natural parents, guardian, conservator, or surrogate parent.

(2) The county's case manager.

(3) A representative of the county's mental health program.

(4) Representatives of social service agencies, as appropriate.

(5) Representatives from the special education local planning agency of the parents' residence, or the responsible school district.

(6) The state hospital social worker and other members of the hospital treatment team familiar with the child.

(7) The child's current teacher.

(b) The interagency review team meeting shall be held as soon as discharge appears imminent, and may occur concurrently with a regularly scheduled quarterly conference meeting at which a child's hospital treatment goals are reviewed. If necessary to ensure full participation, team members may participate through telephone conference.

(c) Factors determining a child's eligibility for participation in the pilot project shall include all of the following:

(1) Determination by the child's interagency review team as follows:

(A) The child, upon discharge from the Program for Children and Youth at Napa State Hospital, may be appropriately placed in intensive foster care and public school as the least restrictive residential and educational environments, under the conditions of the pilot project.

(B) The child would otherwise be placed upon discharge in a group home of a minimum rate classification level of 10, and in a nonpublic, nonsectarian school.

(2) Availability of a foster family agency within the county of the parents' residence or a nearby county that can provide the services required by this chapter.

(3) The agreement of the local education agency to provide educational services under the conditions of the pilot project.

(d) Pursuant to the recommendations of the interagency review team, the responsible county case manager shall work with the Napa County Office of Education as sponsoring agency to contract with a participating foster family agency to secure a foster family home in keeping with the pilot project requirements described in Sections 18362, 18363, and 18365 of the Welfare and Institutions Code.

56841. (a) Following a child's interagency review team meeting at which postdischarge residential placement and pilot project eligibility is determined, but prior to the pupil's discharge from the Program for Children and Youth at Napa State Hospital, a joint meeting of the pupil's individualized education program team and his or her interagency review team, shall be held. The joint team shall identify the pupil's educational and transitional needs and his or her support services requirements, which may include, but need not be limited to, those stated in Sections 56345, 56345.1, and 56363.

(b) The joint team may also determine the need for an instructional assistant skilled in nonconfrontational behavior management, to provide escort, tutorial, and classroom support, as needed.

(c) The individualized education program team shall attempt to place the child in a classroom setting where the teacher is skilled in nonconfrontational behavior management, where there exists a clear, consistent, positive classroom behavior management system, good communication with, and support from, site administration and faculty, and access to mainstreaming opportunities and vocational training or work experience as appropriate.

(d) The interagency review team shall collaborate with and advise the individualized education program planning team on the development, monitoring, implementation, and evaluation of the child's educational program. The advisement may include, but need not be limited to, the following subjects:

(1) Management of pupil behaviors.

(2) Pupil achievement and classroom performance.

(3) Curriculum and optimal teaching methods for addressing the pupil's individual learning strengths and needs.

(4) Appropriate support services.

(5) Transitional and vocational services.

56842. The individualized education program planning team shall include, but not be limited to, all of the following:

(a) The pupil's current teacher.

(b) An administrator from the pupil's current educational placement.

(c) An administrative representative from the responsible and the receiving special education local plan areas or school districts.

(d) The pupil's parents, guardian, conservator, or surrogate parent.

(e) The pupil's foster parents and the pupil's foster family agency social work case manager.

(f) The county case manager or mental health representative.

56843. If necessary to ensure full participation in the planning meetings, members of the teams described in Sections 56840.1 and 56842 may participate through telephone conference. The individualized education program team meeting may be held in conjunction with the individual case plan meeting held pursuant to Section 11404 of the Welfare and Institutions Code, at which other

interagency review team members shall be in attendance or participating by telephone.

56844. (a) The individualized education program team shall determine all of the following for pilot project eligible pupils:

(1) Individualized education program goals, objectives, and services pursuant to Section 56841.

(2) Supplemental services required to support the pupil in the public school setting.

(3) An indication of which of these services would need to be provided in addition to the service options currently available in the receiving local education agency, and the estimated costs of these additional services.

(b) The receiving local education agency shall submit to the Napa County Office of Education a copy of the pupil's individualized education program, with indication of services to be provided, additional services to be purchased, and the estimated costs of those services, as approved by the individualized education program team and the interagency review team.

(c) The Napa County Office of Education shall apportion funds to cover these additional costs on a claims basis, pursuant to Section 56845.1.

56845.1. (a) For the purposes of this pilot project, the Superintendent of Public Instruction shall apportion to the Napa County Office of Education a sum of one hundred thirty-five thousand dollars ($135,000) per year from Item 6100-161-001 of the annual Budget Act, for apportioning to local education agencies for the purchase of supplemental special educational services for pupils participating in this pilot project, pursuant to Section 56844.

(b) The annual apportionment provided to a district for a child participating in this pilot project shall not exceed fifteen thousand dollars ($15,000).

(c) The Napa County Office of Education shall be responsible for allocating funds apportioned pursuant to subdivision (a) to participating local education agencies for the purchase of those supplemental services required by the pupil's individualized education program that are not currently available within the local education agency, for fiscal accounting, for evaluating the pilot project, and for reporting to the Superintendent of Public Instruction and the Legislature.

56845.2. The local education agency serving the participating pupil shall be responsible for reporting to the Napa County Office of Education information required for the purpose of evaluating the effectiveness of the pupil's program plan and this pilot project, which shall include, but not be limited to, both of the following:

(a) Services delivered and costs of supplemental services purchased.

(b) Any and all information pertaining to the evaluation required by Section 18367 of the Welfare and Institutions Code.

56845.5. (a) If participation of a pupil terminates due to a change

in the district of residence, the sending district or county office of education shall convene, with the receiving district or county office, a joint team planning meeting, in accordance with Sections 56841 to 56843, inclusive. If the receiving district or county office elects to participate in the pilot project provided for under this chapter, the district or county office shall notify the Napa County Office of Education of its decision, and may apply for an apportionment pursuant to Section 56844.

(b) If a pupil's participation under this chapter terminates due to age or achievement, or if it is subsequently determined by his or her individual education program team that the pupil's programmatic needs cannot be successfully met in a public school education program, the district or county office shall notify the Napa County Office of Education of the termination, and the Napa County Office of Education shall make the appropriate reduction in the apportionment to the district or county office.

(c) If a nonpublic, nonsectarian school program placement is made for a pupil participating under this chapter due to an unsuccessful transition to a public school education program, the district or county office may begin the reporting of nonpublic school costs under Sections 56740 and 56775.

56848. (a) To determine the cost and treatment effectiveness of the pilot project operated under this chapter, the Napa County Office of Education as sponsoring agency shall conduct an evaluation of the pilot project pursuant to Section 18367 of the Welfare and Institutions Code.

(b) The superintendent shall report the results of the evaluation to the Legislature no later than January 1, 1997.

56848.5. County participation in the pilot project established under this chapter shall be at the option of the county.

56849. This chapter shall become inoperative on September 30, 1996, and, as of January 1, 1997, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Chapter 6.3 (commencing with Section 18360) is added to Part 6 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 6.3. INTENSIVE FOSTER CARE PROGRAMS FOR EMOTIONALLY DISTURBED CHILDREN

18360. The definitions contained in this section shall govern the construction of this chapter, unless the context requires otherwise:

(a) "Department" means the State Department of Social Services.

(b) "Eligible child or children" means any child who is eligible in accordance with the following criteria:

(1) The child is eligible for special education services under the Individuals with Disabilities Education Act (Public Law 101-476).

(2) The child has been determined to be seriously emotionally

disturbed, as defined in Section 300.5 of Title 34 of the Code of Federal Regulations.

(3) The child has, as a result of his or her emotional disturbance, been placed in the Program for Children and Youth at Napa State Hospital, has successfully met his or her treatment goals, is not at risk of requiring restraint, and is being discharged from the Program for Children and Youth.

(4) The child is eligible for out-of-home care upon discharge from the Program for Children and Youth, in accordance with one or both of the following:

(A) The child is eligible for services under Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(B) The child is otherwise eligible for Aid to Families with Dependent Children-Foster Care benefits in accordance with Article 5 (commencing with Section 11400) of Chapter 2 of Part 3, and Chapter 6 (commencing with Section 18350) of this part.

(5) The child has been determined by an interagency review team, as defined in Section 56840.1 of the Education Code, to be eligible for participation in this pilot project, in accordance with the following factors:

(A) The child, upon discharge from the Program for Children and Youth at Napa State Hospital, may be appropriately placed in intensive foster care and public school as the least restrictive residential and educational environments, under the conditions of the pilot project.

(B) The child would otherwise be placed upon discharge in a group home of a minimum rate classification level of 10, and in a nonpublic, nonsectarian school.

(C) Availability of a foster family agency within the county of the parents' residence or a nearby county that can provide the services required by this chapter.

(D) The agreement of the local education agency to provide educational services under the conditions of the pilot project.

(c) "County" means the county of the child's parents' residence, or the county otherwise responsible for the child's residential placement and case management.

18361. (a) The department shall implement an intensive treatment foster care pilot project for eligible children.

(b) (1) Subject to the availability of a foster family agency within the county that can provide the services required by this chapter, the department shall implement the pilot project in each county in which an eligible child resides or in the nearest county available in which services can be provided pursuant to the child's individualized case plan.

(2) Each participating foster family may accept placements from counties other than its host county.

(c) As a condition of participating in the pilot project, each foster family agency shall meet all of the following criteria:

(1) The agency has a contract with the county for the provision of mental health treatment for children.

(2) The agency has extensive experience as a foster family agency, and is specifically experienced in family preservation services, intensive or therapeutic foster care, and the provision of wraparound services.

(3) The agency has the demonstrated capacity to recruit, train, and successfully match seriously emotionally disturbed children with appropriate foster care providers.

(4) The agency has the demonstrated capacity to provide training and followup support to foster care providers in, but not limited to, those topics specified in paragraph (1) of subdivision (a) of Section 18362.

(5) The agency is licensed in or near counties responsible for at least five children eligible for participation in this pilot project.

(6) The agency agrees to support and facilitate the following:

(A) Involvement of the designated foster care providers in the child's life prior to discharge through participation in meetings, phone calls, and two-way visitations, to promote the development of a good foster child and foster parent match, a sound case plan, and a sense of home and family prior to placement.

(B) Followup contacts between the child's service providers while a resident of the Program for Children and Youth in Napa State Hospital, and his or her service providers in postdischarge placement.

(7) The agency agrees to report to the department and to the Napa County Office of Education information required for the monitoring of each child's case plan and the evaluation of the pilot project.

(8) The agency provides, or arranges for the provision of, all additional services required under this chapter.

(d) Foster family agencies wishing to participate in the pilot project shall be approved by the Napa County Office of Education and the placing county agency on the basis of the foster family agency's ability to meet the criteria specified in subdivision (c), and on a review of its program statement and complaint record on file with the Community Care Licensing Division of the department. A memorandum of understanding shall be signed indicating willingness by the foster family agency to cooperate fully with the requirements of the pilot project.

18362. Each foster family agency participating in this program shall provide all of the following personnel and administrative and support services:

(a) (1) Special attention to the selection and training of foster parents. All participating foster parents shall be provided with at least 60 hours of training in the care of emotionally disturbed children and 12 hours of ongoing in-service training per year. Topics to be covered in the training shall include, but not be limited to, attention deficit disorder and hyperkinesis, nonconfrontational

behavior management, serious emotional disturbance, severe learning disabilities, child sexual abuse and its effects, working with abused and neglected children, progressive crises intervention, cardiopulmonary resuscitation, and other topics specific to the child's needs, including any medical condition. All training shall be completed prior to the child's placement in the home. In two-parent homes, placement may be made after one parent has completed 60 hours of training, provided that the second parent has completed 40 hours of training and completes an additional 20 hours of training within the first six months of placement.

(2) Provision of all necessary support services to foster parents.

(b) Caseloads for participating social work case managers that do not exceed five children during the first year of foster home placement, and eight children after one year of stable sustained placement. To the degree possible, the individual providing social work case management should be well matched with the child and family, and should remain the same throughout the foster family agency's involvement.

(c) Therapists for the provision of therapy to the child, the biological parents of the child, and the foster parents of the child.

(d) The specific assignment to each certified family home of a trained social work case manager with experience in residential treatment, who shall be responsible for all of the following:

(1) Training foster parents and alternate foster parents.

(2) Developing an individualized case plan with an interagency team composed of, but not limited to, all of the following:

(A) The foster parents.

(B) The natural parents where appropriate.

(C) The county's case manager.

(D) A representative of the county's mental health program.

(E) Representatives of social services agencies, as appropriate.

(F) Representatives from the special education local planning agency and receiving school.

(G) The state hospital social worker and other representatives of the hospital treatment team familiar with the child.

(H) The child's previous teacher.

(I) The foster family agency social work case manager, or other appropriate representative of the participating foster family agency.

(3) Matching children with foster parents and alternate parents.

(4) Implementing and monitoring the case plan.

(5) Reporting the child's progress and needs to the interagency team.

(6) Making recommendations and arrangements for service provision, including contracting for additional services as necessary, and applying for alternative funding sources for purchase of services.

(7) Doing family preservation activities.

(8) Providing in-home support to child and family, including, but not limited to, structuring a safe environment for the child.

(9) Arranging for coordination of services with the local education

agency.

(e) An alternate certified family home that has been equally prepared, trained, and supported, is familiar to the child, and is available up to six nights per month. This home may be currently providing foster care to other children, within the limits described in subdivision (b) of Section 18363.

(f) A 24-hour oncall administrator who is available to respond to emergency situations.

18363. (a) Each foster family agency participating in the pilot project shall provide for, or arrange for the provision of, all of the following services for children placed in foster care:

(1) Individualized case plans that ensure continuity and stability in the placement of emotionally disturbed children in certified family homes that meet the needs of children in making the transition from institutional placement to noninstitutional placement.

(2) Education and mental health services for children.

(3) Therapeutic afterschool programs for children.

(4) In-home and support services necessary to implement the case plan.

(5) Other necessary services for children in placement, including medical and dental services.

(b) No more than one emotionally disturbed child shall be placed in a certified family home unless the participating foster family agency provides the county welfare department or county mental health department, as the placing agency, with a written assessment of the risk and compatibility of placing two emotionally disturbed children together, and the county case manager permits such a placement. However, there shall be not more than a total of five children, including natural children, living in a certified family home with two adults, and there shall be not more than a total of three children living in a certified family home with one adult.

(c) Any use of physical contact to manage the behavior of a child that is reported to the foster family agency pursuant to subdivision (d) of Section 18365 shall in turn be reported by the foster family agency to the Napa County Office of Education, and to the Community Care Licensing Division of the department as a special incident pursuant to Section 80061 of Title 22 of the California Code of Regulations.

18364. As appropriate to their responsibilities for case management, the county offices of mental health or county welfare departments in participating counties shall do all of the following:

(a) Determine the placement of eligible children in intensive foster care pilot project settings. All children placed in the pilot project shall have their placement reviewed by the participating county's existing interagency review team.

(b) Provide routine case management services.

(c) Monitor the implementation of the case plan for the child.

18365. (a) Certified foster parents participating under this

chapter shall ensure the well-being of emotionally disturbed children under their care. This care shall include, but is not limited to, all of the following:

(1) Participating in initial and ongoing in-service training pursuant to subdivision (a) of Section 18362, and demonstrating understanding of, and the ability to meet, the needs of emotionally disturbed children.

(2) Participating in the implementation of the individual case plan and in the development and implementation of the services plan for the child.

(3) Ensuring that the child's medical and dental needs are met.

(4) Reporting to the foster family agency and to the Napa County Office of Education information regarding the child's program, status, and progress, for the purposes of evaluating the pilot project.

(b) To the extent possible, certified foster parents selected under this chapter shall have a background in special education, psychological counseling, nursing, or child development.

(c) (1) All certified foster parents selected to participate in this pilot project shall rent, lease, or own their own homes that shall be certified by the foster family agency.

(2) The home of certified foster parents shall be within reasonably close proximity to the participating foster family agency, or a satellite location of the agency.

(d) (1) All certified foster parents shall report any special incident in accordance with Section 80061 of Title 22 of the California Code of Regulations. Additionally, any use of physical contact to manage the behavior of a child shall be reported as a special incident. Reports under this paragraph shall be made to the participating foster family agency.

(2) The foster family agency shall report incidents reported pursuant to paragraph (1) to the county case manager, to the Napa County Office of Education, and to the Community Care Licensing Division of the department pursuant to subdivision (c) of Section 18363. The foster family agency shall conduct a followup investigation, take appropriate action, and file a summary report with the department.

18366. (a) Rates for foster family agency programs participating under this chapter shall be exempt from the current AFDC-FC foster family agency ratesetting system.

(b) Rates for foster family agency programs participating under this chapter shall be set according to the appropriate pilot classification model, based on the level of services provided to the eligible child and the certified foster family. In all of the pilot classification models, the foster family agency programs shall do all of the following:

(1) Provide case management and social work services with case loads not to exceed five children per worker during the first year of placement, and eight children per worker in the second and subsequent years of placement.

(2) Pay an amount of one thousand two hundred dollars ($1,200) per child per month to the certified foster parent or parents.

(3) Perform activities necessary for the administration of the programs, including, but not limited to, training, recruitment, certification, and monitoring of the certified foster parents.

(4) Provide weekly hours of service by the social work case manager to the eligible child and certified foster family and natural family adequate to meet the needs of the child and to support and maintain the home placement.

(c) (1) Rates for foster family agencies participating under this chapter shall not exceed the following rates, as justified:

(A) For the first year of foster home placement:	
Foster family payments	$1,200
Social work and supportive services	1,200
Subtotal	$2,400
Administrative costs, at 67%	1,608
Total	$4,008
(B) After the first year of stable, sustained foster home placement, for second and subsequent years of foster home placement:	
Foster family payments	$1,200
Social work and supportive services	1,000
Subtotal	$2,200
Administrative costs, at 67%	1,474
Total	$3,674

(2) Supportive services shall be selected from an individualized menu of options including, but not limited to, in-home support counselors, family preservation services, behavior specialist consultation, and backup residential sites. All costs shall be justified annually to the department.

(3) The reduction of rates from the first to the second and subsequent years shall be based upon the assumption of a reduction in need for social work and support services once a child has stabilized in the home. If, after the second year, in the estimation of the child's interagency review team and the county case manager responsible for monitoring the child's case plan, the greater level of support afforded by the first year rates and lower social worker case load are necessary to maintain the home placement and avoid removal to a more restrictive setting, the department shall be notified and the higher rate applied, subject to review every six months.

(d) It is the intent of the Legislature that the pilot classification model and the rate paid to participating foster family agency programs shall decrease as the child's need for services from the foster family agency decreases, but that the rates paid to foster parents shall not be decreased during the period that the child

remains in their home. The foster family agency shall notify the placing county and the department of the reduced services and the pilot classification model, and the rate shall be reduced accordingly, pursuant to subdivision (c).

(e) It is the intent of the Legislature to prohibit any duplication of public funding. Therefore, social worker services, payments to certified foster parents, administrative activities, and the services of in-home support counselors that are funded by another public source shall not be counted in determining whether the foster family agency program has met its obligations to provide the items listed in paragraphs (1), (2), (3), and (4) of subdivision (b).

18367. (a) Under the supervision of the department and the Superintendent of Public Instruction, the Napa County Office of Education, as sponsoring agency, shall conduct an evaluation of pilot project intensive foster care placements and public school special education placements authorized under this chapter, in order to determine the cost and treatment effectiveness of the pilot project.

(b) The evaluation provided for in subdivision (a) shall be based upon the pilot project's ability to accomplish all of the following:

(1) The retention of children in noninstitutional settings.

(2) A reduction or the elimination of recidivism of children to psychiatric hospitals.

(3) A reduction in the need for placement changes, particularly those that result in returning a child to a more restrictive setting or to a placement with a higher rate classification level, as described in Section 11462.

(4) A reduction or the elimination of required formal disciplinary actions, such as for matters requiring suspensions or expulsions, or for breeches of law.

(5) The facilitation and support, whenever possible, of successful educational placements and academic progress in public schools.

(6) The reunification of children, where appropriate, with their biological families.

(c) The evaluation described by subdivision (a) shall include, but not be limited to, measurements of all of the following elements, to be measured every six months for not to exceed three years after a child's initial postdischarge placement:

(1) Placement failure and recidivism rates.

(2) Success criteria and outcome measures, including academic gains, status in school, required formal disciplinary actions, if any, and placement stability.

(3) Instances of negative interactions with community or family, and their resolution. These may include neighbor complaints, licensing citation, police reports, emergency services responses, need for subsequent relocation, running away, instances of restraint, injury incidents, or other incidents requiring reporting to the licensing agency.

(4) A determination of net savings or estimated cost avoidance.

(d) The evaluation instrument used under this section shall utilize

a comparison group.

18368. The Napa County Office of Education shall, if it elects to comply with Section 18367, report to the department and to appropriate committees of the Legislature by January 1, 1997, on the pilot project implemented pursuant to this chapter.

18368.5. County participation in the pilot projects established under this chapter shall be at the option of the county.

18368.7. This chapter shall become inoperative on September 30, 1996, and as of January 1, 1997, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. The Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution due to the unique circumstances concerning services offered by the Napa County Office of Education.

CHAPTER 689

An act to add Section 20562.2 to the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 20562.2 is added to the Government Code, to read:

20562.2. Notwithstanding any other provision of this part to the contrary, the board may enter into an agreement with the governing body of a terminating agency that will cease to exist in order to ensure that (a) the final compensation used in the calculation of benefits of its employees shall be calculated in the same manner as the benefits of employees of agencies that are not terminating, regardless of whether they retire directly from employment with the terminating agency or continue in other public service; and (b) related necessary adjustments in the employer's contribution rate are made, from time to time, by the board prior to the date of termination to ensure that benefits are adequately funded or any other actuarially sound payment technique, including a lump-sum payment at termination, is agreed to by the governing body of the terminating agency and the board.

CHAPTER 690

An act to add Section 39900.5 to the Education Code, relating to school cafeterias.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 39900.5 is added to the Education Code, to read:

39900.5. (a) The governing board of any school district may authorize expenditures from the cafeteria fund or cafeteria account only for those charges from that fund or account that are defined in the California School Accounting Manual or are reported to the State Department of Education on form J-380, as revised April 1990.

(b) A food service program shall not be charged more than once for expenditures for the same service. If a food service program is being charged for a service as a direct cost, the school district shall not also allocate that cost as a direct support cost or indirect cost.

(c) For purposes of this section, an "indirect cost" shall be limited to the lesser of the school district's prior year indirect cost rate as approved by the State Department of Education or the statewide average approved indirect cost for the second prior fiscal year.

(d) Any charges to, or transfers from, a food service program shall indicate when the charge or transfer was made and shall be accompanied by a written explanation of the purpose of, and basis for, the expenditure.

(e) Nothing in this section authorizes a school district to charge a food service program any charges prohibited by state or federal law or regulation.

(f) If the State Department of Education and the Department of Finance concur that a school district has violated this section, the Superintendent of Public Instruction shall direct that school district to transfer double the amount improperly transferred to the district's general fund from that fund to the district's cafeteria fund or cafeteria account for the subsequent fiscal year which is then to be used for the improvement of the district's food service program. If the school district fails to make that transfer as directed, the superintendent shall reduce the school district's regular apportionment determined pursuant to Section 42238 and increase the district's child nutrition allowance determined pursuant to Section 41350 by double the amount improperly transferred to the district's general fund and that amount is then to be used for improvement of the food service program.

(g) It is the intent of the Legislature in enacting this section that responsible school district officials be held fully accountable for the accounting and reporting of food service programs and that minor

and inadvertent instances of noncompliance be resolved in a fair and equitable manner to the satisfaction of the Superintendent of Public Instruction and the Department of Finance.

(h) The Superintendent of Public Instruction, with the approval of the Department of Finance, may waive up to the full transfer amount in subdivision (f) if he or she determines that the noncompliance involved is minor or inadvertent, or both.

CHAPTER 691

An act to amend Section 14105.31 of, and to add and repeal Section 14105.34 of, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 14105.31 of the Welfare and Institutions Code is amended to read:

14105.31. For purposes of the Medi-Cal contract drug list, the following definitions shall apply:

(a) "Single-source drug" means a drug that is produced and distributed under an original New Drug Application approved by the federal Food and Drug Administration. This shall include a drug marketed by the innovator manufacturer and any cross-licensed producers or distributors operating under the New Drug Application, and shall also include a biological product, except for vaccines, marketed by the innovator manufacturer and any cross-licensed producers or distributors licensed by the federal Food and Drug Administration pursuant to Section 262 of Title 42 of the United States Code. A drug ceases to be a single-source drug when the same drug in the same dosage form and strength manufactured by another manufacturer is approved by the federal Food and Drug Administration under the provisions for an Abbreviated New Drug Application.

(b) "Best price" means the negotiated price, or the manufacturer's lowest price available to any class of trade organization or entity, including, but not limited to, wholesalers, retailers, hospitals, repackagers, providers, or governmental entities within the United States, that contracts with a manufacturer for a specified price for drugs, inclusive of cash discounts, free goods, volume discounts, rebates, and on- or off-invoice discounts or credits, shall be based upon the manufacturer's commonly used retail package sizes for the drug sold by wholesalers to retail pharmacies.

(c) "Equalization payment amount" means the amount negotiated between the manufacturer and the department for

reimbursement by the manufacturer, as specified in the contract. The equalization payment amount shall be based on the difference between the manufacturer's direct catalog price charged to wholesalers and the manufacturer's best price, as defined in subdivision (b).

(d) "Manufacturer" means any person, partnership, corporation, or other institution or entity that is engaged in the production, preparation, propagation, compounding, conversion, or processing of drugs, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or in the packaging, repackaging, labeling, relabeling, and distribution of drugs.

(e) "Price escalator" means a mutually agreed upon price specified in the contract, to cover anticipated cost increases over the life of the contract.

(f) "Medi-Cal pharmacy costs" or "Medi-Cal drug costs" means all reimbursements to pharmacy providers for services or merchandise, including single-source or multiple-source prescription drugs, over-the-counter medications, and medical supplies, or any other costs billed by pharmacy providers under the Medi-Cal program.

(g) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 2. Section 14105.34 is added to the Welfare and Institutions Code, to read:

14105.34. (a) The department shall provide for an annual written report of Medi-Cal pharmacy costs or Medi-Cal drug costs, as defined in subdivision (f) of Section 14105.31.

(b) The annual report shall be consistent with the relevant sections of the Quarterly Report of Expenditures for the Medi-Cal Assistance Program, known as the HCFA-64 Report, provided to the Health Care Financing Administration. The report shall include the following expenditure and receipt information:

(1) The total annual equalization payment amounts received by the department pursuant to agreements with the Health Care Financing Administration of the United States Department of Health and Human Services.

(2) The total annual equalization payment amounts received pursuant to state contracts with drug manufacturers.

(3) Total drug cost amounts upon which equalization payments were made.

(c) This section shall remain in effect only until the effective date of the repeal of Section 14105.33, and as of that date is repealed, unless a later enacted statute, which is enacted and takes effect before the effective date of the repeal of Section 14105.33, deletes or extends that date.

CHAPTER 692

An act to amend Sections 1325, 1513.5, 1515, 1516, 1530, 1563, and 1564 of the Code of Civil Procedure, and to amend Item 0840-001-001 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993), relating to unclaimed property, and making an appropriation therefor.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1325 of the Code of Civil Procedure is amended to read:

1325. Notwithstanding Section 13340 of the Government Code, all money in the Unclaimed Property Fund is hereby continuously appropriated to the Controller, without regard to fiscal years, for expenditure for any of the following purposes:

(a) For refund, to the person making such deposit, of amounts, including overpayments, deposited in error in such fund.

(b) For payment of the cost of title searches and appraisals incurred by the Controller covering real or personal property held in the name of an account in such fund.

(c) For payment of the cost incurred by the Controller covering indemnity bonds required in order to have duplicate certificates of ownership issued in order to replace lost certificates, covering personal property held in the name of an account in such fund.

(d) For payment of amounts required to be paid by the state as trustee, bailee, or successor in interest to the preceding owner, pursuant to the provisions of trust deeds, mortgages, or other liens on real property held in the name of an account in such fund.

(e) For payment of costs incurred by the Controller for the repair, maintenance and upkeep of real and personal property held in the name of an account in such fund.

(f) For payment of costs of official advertising in connection with the sale of real or personal property held in the name of an account in such fund.

(g) For payment to taxing agencies of the amounts deducted by the Controller from allowed and approved claims, in accordance with the provisions of subdivision (c) of Section 4986.5 of the Revenue and Taxation Code.

(h) For transfer to the Inheritance Tax Fund, on order of the Controller, of the amount of any inheritance taxes determined to be due and payable to the state by any claimant, with respect to any real or personal property, including cash, claimed by that person under the provisions of this title.

(i) For payment and delivery to claimants of money or other property held to the credit, or in the name, of an account in such

fund, under the provisions of this title.

(j) For transfer to the General Fund, on order of the Controller, of any money or other property in the Unclaimed Property Fund which becomes permanently escheated to the state under the provisions of this title.

Any expenditure made by the Controller pursuant to the provisions of this section shall be charged against any balance credited to the particular account in the Unclaimed Property Fund, in the name of which is held the real or personal property for which the expenditure is made; and if sufficient balance is not available in such account, the expenditure may be made from any appropriation from the General Fund for the support of the Controller, or, in the case of official advertising, from any appropriation available therefor, to be reimbursed from the proceeds of any subsequent sale of the property for which such expenditure is made.

SEC. 2. Section 1513.5 of the Code of Civil Procedure is amended to read:

1513.5. (a) Except as provided in subdivision (c), if the holder has in its records an address for the apparent owner, which the holder's records do not disclose to be inaccurate, every banking or financial organization shall make reasonable efforts to notify by mail any customer that the customer's deposit, account, shares, or other interest in the banking or financial organization will escheat to the state pursuant to subdivision (a) or (b) of Section 1513. The notice shall be given not less than two years nor more than two and one-half years after the date of last activity by, or communication with, the owner with respect to the account, deposit, shares, or other interest, as shown on the record of the financial organization.

(b) The notice required by this section shall specify the time that the deposit, account, shares, or other interest will escheat and the effects of escheat, including the necessity for filing a claim for the return of the deposit, account, shares, or other interest. It shall also include a form, as prescribed by the Controller, by which the customer may declare an intention to maintain the deposit, account, shares, or other interest. If that form is filled out, signed by the customer, and returned to the banking or financial organization, it shall satisfy the requirement of paragraph (3) of subdivision (a) or paragraph (3) of subdivision (b) of Section 1513. The banking or financial organization may impose a service charge on the deposit, account, shares, or other interest for this notice in an amount not to exceed the administrative cost of mailing the notice and form and in no case to exceed two dollars ($2).

(c) Notice as provided by subdivisions (a) and (b) shall not be required for deposits, accounts, shares, or other interests of less than twenty-five dollars ($25), and no service charge may be made for notice on these items.

SEC. 3. Section 1515 of the Code of Civil Procedure is amended to read:

1515. (a) Subject to Section 1510, funds held or owing by a life

insurance corporation under any life or endowment insurance policy or annuity contract which has matured or terminated escheat to this state if unclaimed and unpaid for more than three years after the funds became due and payable as established from the records of the corporation.

(b) If a person other than the insured or annuitant is entitled to the funds and no address of that person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation. This presumption is a presumption affecting the burden of proof.

(c) A life insurance policy not matured by actual proof of the death of the insured according to the records of the corporation is deemed to be matured and the proceeds due and payable if:

(1) The insured has attained, or would have attained if he or she were living, the limiting age under the mortality table on which the reserve is based.

(2) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in paragraph (1).

(3) Neither the insured nor any other person appearing to have an interest in the policy has, within the preceding three years, according to the records of the corporation (i) assigned, readjusted, or paid premiums on the policy, (ii) subjected the policy to loan, or (iii) corresponded in writing with the life insurance corporation concerning the policy.

(d) Any funds otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

SEC. 4. Section 1516 of the Code of Civil Procedure is amended to read:

1516. (a) Subject to Section 1510, any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to its shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within three years after the date prescribed for payment or delivery, escheats to this state.

(b) Subject to Section 1510, any intangible interest in a business association, as evidenced by the stock records or membership records of the association, escheats to this state if (1) the interest in the association is owned by a person who for more than three years has neither claimed a dividend or other sum referred to in subdivision (a) nor corresponded in writing with the association or otherwise indicated an interest as evidenced by a memorandum or other record on file with the association, and (2) the association does not know the location of the owner at the end of the three-year

period. With respect to the interest, the business association shall be deemed the holder.

(c) Subject to Section 1510, any dividends or other distributions held for or owing to a person at the time the stock or other security to which they attach escheats to this state also escheat to this state as of the same time.

(d) With respect to any interest that may escheat pursuant to subdivision (b), the business association shall make reasonable efforts to notify the owner by mail that the owner's interest in the business association will escheat to the state. The notice shall be given not less than 6 nor more than 12 months before the time the interest in the business association becomes reportable to the Controller in accordance with this chapter. The notice required by this subdivision shall specify the time that the interest will escheat and the effects of escheat, including the necessity for filing a claim for the return of the interest. It shall also include a form, as prescribed by the Controller, by which the owner may confirm the owner's current address. If that form is filled out, signed by the owner, and returned to the holder, it shall be deemed that the business association knows the location of the owner.

SEC. 5. Section 1530 of the Code of Civil Procedure is amended to read:

1530. (a) Every person holding funds or other property escheated to this state under this chapter shall report to the Controller as provided in this section.

(b) The report shall be on a form prescribed or approved by the Controller and shall include:

(1) Except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of twenty-five dollars ($25) or more escheated under this chapter.

(2) In case of escheated funds of life insurance corporations, the full name of the insured or annuitant, and his or her last known address, according to the life insurance corporation's records;

(3) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and may be inspected by the Controller. The report shall set forth any amounts owing to the holder for unpaid rent or storage charges and for the cost of opening the safe deposit box or other safekeeping repository, if any, in which the property was contained.

(4) The nature and identifying number, if any, or description of any intangible property and the amount appearing from the records to be due, except that items of value under twenty-five dollars ($25) each may be reported in aggregate.

(5) Except for any property reported in the aggregate, the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the

property.

(6) Other information which the Controller prescribes by rule as necessary for the administration of this chapter.

(c) If the holder is a successor to other persons who previously held the property for the owner, or if the holder has changed his or her name while holding the property, he or she shall file with his or her report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 or fiscal year-end next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The Controller may postpone the reporting date upon his or her own motion or upon written request by any person required to file a report.

(e) The report, if made by an individual, shall be verified by the individual; if made by a partnership, by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer or other employee authorized by the holder.

SEC. 6. Section 1563 of the Code of Civil Procedure is amended to read:

1563. (a) Except as provided in subdivision (b), all escheated property delivered to the Controller under this chapter shall be sold by the Controller to the highest bidder at public sale in whatever city in the state affords in his or her judgment the most favorable market for the property involved. The Controller may decline the highest bid and reoffer the property for sale if he or she considers the price bid insufficient. The Controller need not offer any property for sale if, in his or her opinion, the probable cost of sale exceeds the value of the property. Any sale of escheated property held under this section shall be preceded by a single publication of notice thereof, at least one week in advance of sale, in an English language newspaper of general circulation in the county where the property is to be sold.

(b) Securities listed on an established stock exchange shall be sold at the prevailing prices on that exchange within one year following receipt by the Controller. Other securities may be sold over the counter at prevailing prices or, with prior approval of the State Board of Control, by such other method as the Controller may determine to be advisable. United States government savings bonds and United States war bonds shall be presented to the United States for payment. Subdivision (a) does not apply to the property described in this subdivision.

(c) The purchaser at any sale conducted by the Controller pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The Controller shall execute all documents necessary to complete the transfer of title.

SEC. 7. Section 1564 of the Code of Civil Procedure is amended to read:

1564. (a) All money received under this chapter, including the proceeds from the sale of property under Section 1563, shall be deposited in the Unclaimed Property Fund in an account titled "Abandoned Property."

(b) Notwithstanding Section 13340 of the Government Code, all money in the Abandoned Property Account in the Unclaimed Property Fund is hereby continuously appropriated to the Controller, without regard to fiscal years, for expenditure in accordance with law in carrying out and enforcing the provisions of this chapter, including, but not limited to, the following purposes:

(1) For payment of claims allowed by the Controller under the provisions of this chapter.

(2) For refund, to the person making such deposit, of amounts, including overpayments, deposited in error in such fund.

(3) For payment of the cost of appraisals incurred by the Controller covering property held in the name of an account in such fund.

(4) For payment of the cost incurred by the Controller for the purchase of lost instrument indemnity bonds, or for payment to the person entitled thereto, for any unpaid lawful charges or costs which arose from holding any specific property or any specific funds which were delivered or paid to the Controller, or which arose from complying with this chapter with respect to such property or funds.

(5) For payment of amounts required to be paid by the state as trustee, bailee, or successor in interest to the preceding owner.

(6) For payment of costs incurred by the Controller for the repair, maintenance, and upkeep of property held in the name of an account in such fund.

(7) For payment of costs of official advertising in connection with the sale of property held in the name of an account in such fund.

(8) For transfer to the General Fund as provided in subdivision (c).

(9) For transfer to the Inheritance Tax Fund of the amount of any inheritance taxes determined to be due and payable to the state by any claimant with respect to any property claimed by him or her under the provisions of this chapter.

(c) At the end of each month, or more often if he or she deems it advisable, the Controller shall transfer all money in the Abandoned Property Account in excess of fifty thousand dollars ($50,000) to the General Fund. Before making this transfer, the Controller shall record the name and last known address of each person appearing from the holders' report to be entitled to the escheated property and the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, and the name of the corporation. The record shall be available for public inspection at all reasonable business hours.

SEC. 8. Item 0840-001-001 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993) is amended to read:

0840-001-001—For support of State Controller 60,689,000
Schedule:
(a) 100000-Personal Services 64,428,000
(b) 300000-Operating Expenses and Equipment 34,790,000
(c) Reimbursements .....—30,763,000
(d) Amount payable from the Motor Vehicle Fuel Account, Transportation Tax Fund (Item 840-001-061) ..... —2,660,000
(e) Amount payable from the Highway Users Tax Fund (Item 0840-001-062) ..... —747,000
(f) Amount payable from the Local Revenue Fund (Item 0840-001-330) ..... —362,000
(g) Amount payable from the State School Building Lease-Purchase Fund (Item 0840-001-344) ..... —550,000
(h) Amount payable from the State School Building Aid Fund (Item 0840-001-739) ..... —118,000
(i) Amount payable from the Federal Trust Fund (Item 0840-001-890) .. —2,292,000
(j) Amount payable from the Assessment Fund (Item 0840-001-903) .. —871,000
(k) Amount payable from nongovernmental cost funds, Retail Sales Tax Fund (Item 0840-001-988) ..... —166,000
Provisions:
1. The appropriation made by this item shall be in lieu of any Cigarette Tax Fund allocation made pursuant to subdivision (b) of Section 30462 of the Revenue and Taxation Code during the 1993–94 fiscal year, and no funds shall be allocated to the Controller pursuant to Section 30462 of the Revenue and Taxation Code during the 1993–94 fiscal year.
2. The appropriation made by this item shall be in lieu of the appropriation in Section 1564 of the Code of Civil Procedure for all costs, expenses, or obligations connected with the administration of the Unclaimed Property Law, with the exception of payment of owners' or holders' claims pursuant to Section 1540, 1542, 1560, or 1561 of the Code of Civil Procedure.
3. 1.9 personnel years in the Mandate Claims Unit

may only be used to develop criteria to automate the mandated claims process. This unit shall notify the Department of Finance and the Joint Legislative Budget Committee of the progress of the automation project on or before September 15, 1993, and February 15, 1994.

4. Of the claims received for reimbursement of court-ordered or voluntary desegregation programs pursuant to Sections 42243.6, 42247, and 42249 of the Education Code, the Controller shall pay only those claims that have been subjected to audit by school districts in accordance with the Controller's procedures manual for conducting audits of education desegregation claims. Furthermore, the Controller shall pay only those past year actual claims for desegregation program costs that are accompanied by all reports issued by the auditing entity, unless the auditing entity was the Controller.
5. No less than 0.9 personnel year in the Audits Division shall be used to audit education desegregation claims.
6. The Controller may, with the concurrence of the Director of Finance and the Chairperson of the Joint Legislative Budget Committee, bill affected state departments for activities required by State Administrative Manual Section 20050—Administration of Federal Pass-through Funds.

   No billing may be sent to affected departments sooner than 30 days after the Chairperson of the Joint Legislative Budget Committee has been notified by the Director of Finance that he or she concurs with the amounts specified in the billings.
7. The Controller shall redirect $940,000 from its administrative activities to the following activities: Sale of Securities, Inheritance Tax Collections, and Audits of Unclaimed Property for a General Fund revenue gain of $28,000,000.
8. Except as otherwise specified in this provision, no funds appropriated by this act or any other provision of law may be expended by the Controller for any of the following:
   (a) Notifying or publishing pursuant to Section 1531 of the Code of Civil Procedure.
   (b) Locating owners of unclaimed property.
   (c) Providing information to the public, other than to holders of unclaimed property (as defined in subdivision (e) of Section 1501 of

the Code of Civil Procedure), concerning the unclaimed property program or possible existence of unclaimed property held by the Controller's office, except in response to a specific unsolicited request.

The Controller may expend not more than $35,000 of the moneys appropriated to the Controller by this act for the purpose of providing mailed notice to the apparent owners of escheated property as required by subdivision (e) of Section 1531 of the Code of Civil Procedure; provided, that none of the moneys used for this purpose may be redirected from funding for the Controller's audit activities. It is the intent of the Legislature that, during the 1993–94 fiscal year, the Controller shall generate $43,000,000 in General Fund revenues additional to the amount estimated to be generated during that fiscal year by the Governor's Budget for the 1993–94 fiscal year as proposed in January of 1993.

9. The Controller shall increase its audits of the provider billings in the Medi-Cal program in such a manner as to increase Medi-Cal resources by $30,000,000 ($15,000,000 of state funds in the General Fund and $15,000,000 of federal funds) in excess of the amount proposed by the Governor in January 1993.

CHAPTER 693

An act to add Section 33216.5 to the Health and Safety Code, relating to redevelopment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 33216.5 is added to the Health and Safety Code, to read:

33216.5. (a) The Legislature finds and declares all of the following:

(1) The City of Shasta Lake, which is located in the County of Shasta, was incorporated on July 2, 1993.

(2) The Shasta Dam Area Redevelopment Project, which was

established in July 1991, is located within the City of Shasta Lake.

(3) The City of Shasta Lake and the County of Shasta are in agreement that territorial jurisdiction for the Shasta Dam Area Redevelopment Project should be transferred from the redevelopment agency of the County of Shasta to the redevelopment agency of the City of Shasta Lake. Pursuant to subdivision (b) of Section 33215, the city council has adopted an ordinance declaring the need for an agency to function in the city.

(4) Under subdivision (c) of Section 33215, however, the transfer of jurisdiction for the Shasta Dam Area Redevelopment Project cannot become effective until the first day of the first fiscal year beginning after the adoption of the later of the required ordinances.

(5) Because the City of Shasta Lake was incorporated on the second day of the current fiscal year, the city is uniquely burdened by the requirement of existing law, which delays until July 1, 1994, the effectiveness of the agreement to transfer the redevelopment project from the agency of the county to the agency of the city.

(6) Therefore, to effectuate the purposes of the Community Redevelopment Law, the transfer of the territorial jurisdiction for the Shasta Dam Area Redevelopment Project from the redevelopment agency of the County of Shasta to the redevelopment agency of the City of Shasta Lake should be authorized forthwith.

(b) Notwithstanding Section 33215 or any other provision of law, territorial jurisdiction for the Shasta Dam Area Redevelopment Project is hereby transferred, as of the effective date of the act that adds this section, from the redevelopment agency of the County of Shasta to the redevelopment agency of the City of Shasta Lake under the terms and conditions agreed upon by the city and county.

SEC. 2. The Legislature finds and declares that, because of the unique circumstances applicable only to the City of Shasta Lake and the County of Shasta, as set forth in Section 33216.5 of the Health and Safety Code, a statute of general applicability cannot be enacted within the meaning of Section 16 of Article XVI of the California Constitution and this special statute is necessary.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to effectuate the purposes of the Community Redevelopment Law and to promote the efficient operation of the Shasta Dam Area Redevelopment Project by authorizing the prompt transfer of its jurisdiction from the redevelopment agency of the County of Shasta to the redevelopment agency of the City of Shasta Lake, it is necessary that this act take effect immediately.

CHAPTER 694

An act to amend Sections 1207, 1210, 1260, 1261.5, 1263, 1264, and 1265 of, and to add Section 1229 to, the Business and Professions Code, relating to clinical laboratories, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1207 of the Business and Professions Code is amended to read:

1207. (a) As used in this chapter, "clinical chemist," or "clinical microbiologist," or "clinical toxicologist," or "clinical molecular biologist," or "clinical cytogeneticist," means any person licensed by the department to engage in, or supervise others engaged in, clinical laboratory practice limited to his or her area of specialization or to direct a clinical laboratory providing service only within the area of specialization covered by his or her license.

(b) The department shall adopt regulations identifying the areas of specialization for each of the license categories identified in subdivision (a) and the clinical laboratories that may be directed by each.

SEC. 2. Section 1210 of the Business and Professions Code is amended to read:

1210. (a) As used in this chapter, "clinical chemist technologist," "clinical microbiologist technologist," "clinical toxicologist technologist," "clinical immunohematologist technologist," "clinical molecular biologist technologist," "clinical cytogeneticist technologist," and "clinical histocompatibility technologist" means any person, other than those licensed to direct clinical laboratories, or licensed as a clinical laboratory technologists or trainees, who is licensed to engage in clinical laboratory practice limited to the science for which he or she is licensed by the department.

(b) The department shall adopt regulations identifying the sciences included in each of the license categories identified in subdivision (a).

(c) Clinical chemist technologists, clinical microbiologist technologists, clinical toxicologist technologists, clinical immunohematologist technologists, clinical molecular biologist technologists, clinical cytogeneticist technologists, and clinical histocompatibility technologists shall engage in clinical laboratory practice authorized by their licensure only under the direction of a person authorized to direct a laboratory under the provisions of this chapter.

SEC. 3. Section 1229 is added to the Business and Professions Code, to read:

1229. The Legislature finds and declares that regulations specifying the licensure qualifications of persons performing genetic testing specialties, including, but not limited to, molecular biology and cytogenetics, are essential to the proper administration of the statewide program of genetic testing authorized under Section 156 of the Health and Safety Code. The department shall adopt regulations to implement the act that added this section in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Initial regulations to implement that act may be adopted as emergency regulations. The adoption of these initial emergency regulations shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety or general welfare. Initial emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

SEC. 4. Section 1260 of the Business and Professions Code is amended to read:

1260. The department shall issue a clinical laboratory bioanalyst's license to each person who is a lawful holder of a degree of master of arts, master of science, or an equivalent or higher degree as determined by the department with a major in one of the biological sciences. Such education shall have been obtained in one or more established and reputable institutions maintaining standards equivalent, as determined by the department, to those institutions accredited by the Western Association of Schools and Colleges or an essentially equivalent accrediting agency, as determined by the department. The applicant also shall have a minimum of four years' experience as a licensed clinical laboratory technologist, performing clinical laboratory work embracing the various fields of clinical laboratory activity in a clinical laboratory approved by the department. The quality and variety of this experience shall be satisfactory to the department and shall have been obtained within the six-year period immediately antecedent to admission to the examination. The applicant shall successfully pass a written and oral examination conducted by the department or a committee designated by the department to conduct the examinations, indicating that the applicant is properly qualified. The department shall establish by regulation the required courses to be included in the college or university training.

SEC. 5. Section 1261.5 of the Business and Professions Code is amended to read:

1261.5. The department may issue clinical laboratory technologist's licenses limited to clinical chemistry, clinical microbiology, clinical toxicology, clinical histocompatibility, clinical immunohematology, clinical molecular biology, clinical cytogenetics, or other areas of laboratory specialty when determined to be necessary by the department in order for licensure categories to keep abreast of changes in laboratory or scientific technology.

Whenever the department determines that a new limited technologist license category is necessary, it shall adopt regulations identifying the category and the areas of specialization included within the category.

To qualify for admission to the examination for a special clinical laboratory technologist's license, an applicant shall have all the following:

(a) Have graduated from a college or university maintaining standards equivalent, as determined by the department, to those institutions accredited by the Western Association of Schools and Colleges or an essentially equivalent accrediting agency with a baccalaureate or higher degree with a major appropriate to the field for which a license is being sought.

(b) Have one year of full-time postgraduate training or experience in the various areas of analysis in the field for which a license is being sought in a laboratory that has a license issued under this chapter or which the department determines is equivalent thereto.

(c) Whenever a limited clinical laboratory technologist license is established for a specific area of specialization, the department may issue the license without examination to applicants who had met standards of education and training, defined by regulations, prior to the date of the adoption of implementing regulations.

(d) The department shall adopt regulations to implement this section.

SEC. 6. Section 1263 of the Business and Professions Code is amended to read:

1263. The department shall license as trainees those individuals desiring to train for either a clinical laboratory technologist's license or a limited technologist's license, providing such individuals meet the academic requirements.

No trainee license shall be issued unless the applicant has completed at least 90 semester hours or equivalent quarter hours of university or college work or the essential equivalent as determined by the department which must have included at least 23 semester hours or equivalent quarter hours of courses in the sciences as determined by regulations of the department. Applicants who have completed military training schools may be granted academic credit toward licensure by the department on the basis of recommendations made by the American Council on Education.

Applicants shall apply for the license on forms provided by the department and meet the requirements of this chapter and any standards as are established by regulations of the department.

SEC. 7. Section 1264 of the Business and Professions Code is amended to read:

1264. The department shall issue a clinical chemist, clinical microbiologist, clinical toxicologist, clinical molecular biologist, or clinical cytogeneticist license to each person who has applied for the license on forms provided by the department, who is a lawful holder

of a master of science or doctoral degree in the specialty for which the applicant is seeking a license and who has met such additional reasonable qualifications of training, education, and experience as the department may establish by regulations.

(a) The graduate education shall have included 30 semester hours of coursework in the applicant's specialty. Applicants possessing only a master of science degree shall have the equivalent of one year of full-time, directed study or training in procedures and principles involved in the development, modification or evaluation of laboratory methods, including training in complex methods applicable to diagnostic laboratory work. Each applicant must have had one year of training in his or her specialty in a clinical laboratory acceptable to the department and three years of experience in his or her specialty in a clinical laboratory, two years of which must have been at a supervisory level. The education shall have been obtained in one or more established and reputable institutions maintaining standards equivalent, as determined by the department, to those institutions accredited by an agency acceptable to the department. The department shall determine by examination that the applicant is properly qualified. Examinations, training, or experience requirements for specialty licenses shall cover only the specialty concerned.

(b) The department may issue licenses without examination to applicants who have passed examinations of other states or national accrediting boards whose requirements are equal to or greater than those required by this chapter and regulations established by the department. The evaluation of other state requirements or requirements of national accrediting boards shall be carried out by the department with the assistance of representatives from the licensed groups. This section shall not apply to persons who have passed an examination by another state or national accrediting board prior to the establishment of requirements that are equal to or exceed those of this chapter or regulations of the department.

(c) The department may issue licenses without examination to applicants who had met standards of education and training, defined by regulations, prior to the date of the adoption of implementing regulations.

(d) The department shall adopt regulations to conform to this section.

SEC. 8. Section 1265 of the Business and Professions Code is amended to read:

1265. The department shall issue a clinical laboratory license to any person who has applied for the license on forms provided by the department and who is found to be in compliance with this chapter and regulations pertaining thereto. The application shall include the name or names of the owner or the owners, the name or names of the director or directors, the name and location of the laboratory, and any other information as may be required by the department. Application shall be made by the owners of the laboratory and the

directors prior to its opening. A license to conduct a clinical laboratory if the owners are not the directors shall be issued jointly to the owners and the directors and the license shall include any information as may be required by the department. The owners and directors shall be severally and jointly responsible to the department for the maintenance and conduct thereof or for any violations of this chapter and regulations pertaining thereto. The department shall not issue a license until it is satisfied that the clinical laboratory will be operated within the spirit and intent of this chapter, that the owners and directors are each of good moral character, and that the granting of the license will not be in conflict with the interests of public health. A separate license shall be obtained for each laboratory as defined by regulations of the department and the department shall be notified within 15 days of any change in location. The department shall establish by regulation the minimum requirements to be fulfilled by those seeking a clinical laboratory license. A license shall be automatically revoked in 30 days if there is a major change of directorship or ownership of the laboratory as determined by the department. The license shall be valid for the calendar year or remainder thereof for which it is issued unless revoked or suspended. If the department does not within 60 days after the date of receipt of the application issue a license, it shall state the grounds and reasons for its refusal in writing, serving a copy upon the applicant by certified mail addressed to the applicant at his or her last known address.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The authority of this statute must be granted to the department in order to provide, at the earliest possible time, regulations and a licensing program to permit appropriately trained individuals to provide diagnoses and available treatment to the public.

CHAPTER 695

An act to amend Section 65588 of, and to add Section 65588.1 to, the Government Code, relating to land use.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 65588 of the Government Code is amended to read:

65588. (a) Each local government shall review its housing element as frequently as appropriate to evaluate all of the following:

(1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.

(2) The effectiveness of the housing element in attainment of the community's housing goals and objectives.

(3) The progress of the city, county, or city and county in implementation of the housing element.

(b) The housing element shall be revised as appropriate, but not less than every five years, to reflect the results of this periodic review.

In order to facilitate effective review by the department of housing elements, the following local governments shall prepare and adopt the first two revisions of their housing elements no later than the dates specified in the following schedule, notwithstanding the date of adoption of the housing elements in existence on the effective date of the act which amended this section during the 1983–84 Session of the Legislature.

(1) Local governments within the regional jurisdiction of the Southern California Association of Governments: July 1, 1984, for the first revision and July 1, 1989, for the second revision.

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: January 1, 1985, for the first revision, and July 1, 1990, for the second revision.

(3) Local governments within the regional jurisdiction of the San Diego Association of Governments, the Council of Fresno County Governments, the Kern County Council of Governments, the Sacramento Council of Governments, and the Association of Monterey Bay Area Governments: July 1, 1985, for the first revision, and July 1, 1991, for the second revision.

(4) All other local governments: January 1, 1986, for the first revision, and July 1, 1992, for the second revision.

(5) Subsequent revisions shall be completed not less often than at five-year intervals following the second revision.

(c) The review and revision of housing elements required by this section shall take into account any low- or moderate-income housing provided or required pursuant to Section 65590.

(d) The review pursuant to subdivision (c) shall include, but need not be limited to, the following:

(1) The number of new housing units approved for construction within the coastal zone after January 1, 1982.

(2) The number of housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, required to be provided in new housing developments either within the coastal zone or within three miles of the coastal zone pursuant to Section 65590.

(3) The number of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been authorized to be demolished or converted since January 1, 1982, in the coastal zone.

(4) The number of residential dwelling units for persons and

families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been required for replacement or authorized to be converted or demolished as identified in paragraph (3). The location of the replacement units, either onsite, elsewhere within the locality's jurisdiction within the coastal zone, or within three miles of the coastal zone within the locality's jurisdiction, shall be designated in the review.

(e) Notwithstanding the requirements of paragraph (5) of subdivision (b), the dates of revisions for the housing element shall be modified upon the effective date of this provision as follows:

(1) Local governments within the regional jurisdiction of the Southern California Association of Governments: June 30, 1996, for the third revision, and June 30, 2000, for the fourth revision.

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: June 30, 1997, for the third revision, and June 30, 2002, for the fourth revision.

(3) Local governments within the regional jurisdiction of the San Diego Association of Governments, the Council of Fresno County Governments, the Kern County Council of Governments, the Sacramento Council of Governments, and the Association of Monterey Bay Area Governments: June 30, 1998, for the third revision, and June 30, 2003, for the fourth revision.

(4) All other local governments: June 30, 1999, for the third revision, and June 30, 2004, for the fourth revision.

(5) Subsequent revisions shall be completed not less often than at five-year intervals following the fourth revision.

SEC. 2. Section 65588.1 is added to the Government Code, to read:

65588.1. (a) The planning period of existing housing elements prepared pursuant to subdivision (b) of Section 65588 shall be extended through June 30 of the year of the housing element due date prescribed in subdivision (e) of Section 65588. Local governments shall continue to implement the housing program of existing housing elements and the annual review pursuant to Section 65400.

(b) The extension provided in this section shall not limit the existing responsibility under subdivision (b) of Section 65588 of any jurisdiction to adopt a housing element in conformance with this article.

(c) It is the intent of the Legislature that nothing in this section shall be construed to reinstate any mandates pursuant to Chapter 1143 of the Statutes of 1980 suspended by the Budget Act of 1993–94.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000),

reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 696

An act to add Section 11006.6 to, and to add Article 3.5 (commencing with Section 15125) to Chapter 9 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to public assistance, and making an appropriation therefor.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 11006.6 is added to the Welfare and Institutions Code, to read:

11006.6. (a) The department may establish and operate a central benefit issuance system in one or more counties whereby grants in aid paid pursuant to this part or any other program administered by the department and cash payments under the Food Stamp Program may be issued directly to the recipient by the Controller. Warrants representing payments under this system shall be drawn on the Central Benefit Issuance Fund. In counties where the central benefit issuance system is in operation, Sections 15150, 15150.5, 15151, and 15153, and any other related section shall not apply with respect to benefits.

(b) (1) In a case of emergency or immediate need by a recipient that cannot be addressed in a timely manner, as set forth in existing law, by issuance of a Controller's warrant, those counties, acting as agents for the department, shall authorize payment to be issued by the Central Benefit Issuance System directly to recipients from a department account designated for that purpose.

(2) Any check issued pursuant to paragraph (1) that remains unpaid for 180 days after it becomes payable shall be void and shall be canceled by the department and redeposited to the account from which it is drawn. The department shall cause to be printed prominently on the face of any check issued pursuant to paragraph (1) a notice of the requirements of this paragraph.

(c) The department shall ensure that aid issued through a central benefit issuance system is delivered timely and that the system does not reduce the accessibility of benefits and services to the recipient.

SEC. 2. Article 3.5 (commencing with Section 15125) is added to Chapter 9 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 3.5. Central Benefit Issuance Fund

15125. (a) The Central Benefit Issuance Fund is hereby created in the State Treasury.

(b) The fund shall be administered by the State Department of Social Services, and, notwithstanding Section 13340 of the Government Code, all moneys in the fund are hereby continuously appropriated to the department, without regard to fiscal years, for expenditure for the purpose of making payments or advances to recipients of public social services and food stamps, as provided in Section 11006.6.

(c) Amounts to be transferred to the Central Benefit Issuance Fund shall be determined by the department, in accordance with an agreed upon format with the Controller, from the funds and appropriations properly chargeable for the implementation of the central benefit issuance system provided for in Section 11006.6.

(d) (1) Notwithstanding Section 17070 of the Government Code, any warrant drawn on the Central Benefit Issuance Fund that remains unpaid for 180 days after it becomes payable, shall be void and shall be canceled by the Controller.

(2) The Controller shall cause to be printed prominently on the face of each warrant issued from the fund, a notice regarding the requirements of paragraph (1).

(e) Notwithstanding Sections 17091 and 17092 of the Government Code, the department, with the concurrence of the Controller, shall provide for the replacement of lost or stolen warrants consistent with Section 29853.5 of the Government Code. The department may adopt regulations implementing this subdivision.

15126. Counties participating in the central benefit issuance system, pursuant to Section 11006.6, shall pay to the department, at regular intervals as determined by the department, the share of public social services costs otherwise attributable to local government. Failure to pay within the determined intervals shall result in offsetting the appropriate amount from any funds going to the county from the state. Counties shall remit their share of public social services costs directly to the state, in accordance with an agreed upon format with the Controller, for deposit to the Central Benefit Issuance Fund or where deemed appropriate by the department.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become

operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 697

An act to add Section 14110.15 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares as follows:

(1) (A) Federal law requires all Medicare and medicaid certified nursing facilities to use a minimum data set to assess the medical and physical status of all patients admitted to the facility.

(B) The federal Health Care Financing Administration of the Department of Health and Human Services has proposed that facilities to computerize the minimum data set, and intends to require reporting and collection of minimum data set information by both the federal government and individual states by October 1, 1994.

(2) (A) Federal law requires preadmission screening and annual resident reviews to be conducted for Medicare and medicaid certified nursing facility patients to determine whether an individual is appropriate for placement and continuing care.

(B) State law requires facilities to evaluate the medical and physical status of patients using a treatment authorization request form in order to receive Medi-Cal reimbursement.

(C) The existing systems for preadmission screening and Medi-Cal treatment authorization are extremely paperwork and labor intensive and duplicate the assessment process used by facilities to produce the minimum data set.

(b) Therefore, it is the intent of the Legislature in enacting this act to minimize unnecessary paperwork and eliminate duplication in publicly funded health care programs.

SEC. 2. It is the intent of the Legislature, in enacting this act, to facilitate compliance with all of the requirements stated in Section 1 of this act and, to the fullest extent possible, and as permitted by the federal government, to integrate all of these systems.

SEC. 3. Section 14110.15 is added to the Welfare and Institutions Code, to read:

14110.15. (a) The department shall develop, collect, and maintain, in an electronic format, all data elements in the minimum data set specified by the federal government. The data base shall incorporate the data required for preadmission screening and annual resident reviews, and Medi-Cal treatment authorization requests.

The department shall make the format of this new data base available to the public.

(b) All skilled nursing facilities and nursing facilities required by federal law to complete the minimum data set form shall provide the data to the department in a manner and form prescribed by the director. The director may require that the submission of that data shall be in an electronic format.

(c) The department shall design the minimum data set data base in a manner that maintains resident confidentiality and that allows the use of the data by other authorized state agencies, including, but not limited to, the Office of Statewide Health Planning and Development and the Department of Mental Health. To the extent possible, those other state agencies shall obtain the minimum data set and preadmission screening and annual resident review data from the department's data base established and maintained pursuant to this section.

(d) To the fullest extent possible, the department shall use the minimum data set data base to meet the requirements of the current treatment authorization request review process and shall automate use of the minimum data set information for that purpose.

(e) This section shall not be construed to prohibit the department or any other state agency from requiring additional information that is not available from the minimum data set data base in order to meet other data needs.

(f) The department shall implement this section no later than the date specified by the federal government for facility completion of automation of the minimum data set data. The department shall, within a reasonable time, make necessary system changes to begin the use of the automated minimum data set data to meet its treatment authorization and preadmission screening and annual resident review data requirements. To the fullest extent possible, these system changes shall be anticipated and commenced in advance of the federal government's final implementation date.

(g) The system shall be developed and implemented in consultation with representatives of the long-term care industry and other interested parties, such as physicians and other health care professionals.

(h) The department shall implement the development of the minimum data set data base only if federal funds are available for that purpose. Development of the data system applications for use of the automated minimum data set data base by the department are subject to federal approval and federal financial participation for the affected systems.

CHAPTER 698

An act to amend Sections 32121, 32121.4, and 32126 of the Health and Safety Code, relating to hospital districts and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 32121 of the Health and Safety Code is amended to read:

32121. Each local hospital district shall have and may exercise the following powers:

(a) To have and use a corporate seal and alter it at its pleasure.

(b) To sue and be sued in all courts and places and in all actions and proceedings whatever.

(c) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district, and to control, dispose of, convey, and encumber the same and create a leasehold interest in the same for the benefit of the district.

(d) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district.

(e) To establish one or more trusts for the benefit of the district, to administer any trust declared or created for the benefit of the district, to designate one or more trustees for trusts created by the district, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the district.

(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, to perform the functions in respect to the legal affairs of the district as the board may direct, and to call upon the district attorney of the county in which the greater part of the land in the district is situated for legal advice and assistance in all matters concerning the district, except that if that county has a county counsel, the directors may call upon the county counsel for legal advice and assistance.

(g) To employ any officers and employees, including architects and consultants, the board of directors deems necessary to carry on properly the business of the district.

(h) To prescribe the duties and powers of the hospital administrator, secretary, and other officers and employees of any hospitals of the district, to establish offices as may be appropriate and to appoint board members or employees to those offices, and to determine the number of, and appoint, all officers and employees

and to fix their compensation. The officers and employees shall hold their offices or positions at the pleasure of the boards of directors.

(i) To do any and all things that an individual might do that are necessary for, and to the advantage of, a hospital and a nurses' training school, or a child care facility for the benefit of employees of the hospital or residents of the district.

(j) To establish, maintain, and operate, or provide assistance in the operation of, one or more health facilities or health services, including, but not limited to, outpatient programs, services, and facilities, retirement programs, services, and facilities, chemical dependency programs, services, and facilities, or other health care programs, services, and facilities and activities at any location within or without the district for the benefit of the district and the people served by the district.

"Health facilities," as used in this subdivision, means those facilities defined in either Section 15432 of the Government Code or Section 1250 and specifically includes freestanding chemical dependency recovery units.

(k) To do any and all other acts and things necessary to carry out this division.

(*l*) To acquire, maintain, and operate ambulances or ambulance services within and without the district.

(m) To establish, maintain, and operate, or provide assistance in the operation of, free clinics, diagnostic and testing centers, health education programs, wellness and prevention programs, rehabilitation, aftercare, and any other health care services provider, groups, and organizations that are necessary for the maintenance of good physical and mental health in the communities served by the district.

(n) To establish and operate in cooperation with its medical staff a coinsurance plan between the hospital district and the members of its attending medical staff.

(o) To establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the hospital district.

(p) (1) To transfer, at fair market value, any part of its assets to one or more nonprofit corporations to operate and maintain the assets. A transfer pursuant to this paragraph shall be deemed to be at fair market value if an independent consultant, with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry standards for appraisal and valuation, determines that fair and reasonable consideration is to be received by the district for the transferred hospital assets. Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled

election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(2) To transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets of the district, including without limitation real property, equipment, and other fixed assets, current assets, and cash, relating to the operation of the district's hospital to one or more nonprofit corporations to operate and maintain the assets.

(A) A transfer of 50 percent or more of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if all of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least five properly noticed open and public meetings in compliance with the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, and Section 32106.

(ii) The transfer agreement provides that the hospital district shall approve all initial board members of the nonprofit corporation and any subsequent board members as may be specified in the transfer agreement.

(iii) The transfer agreement provides that all assets transferred to the nonprofit corporation, and all assets accumulated by the corporation during the term of the transfer agreement arising out of or from the operation of the transferred assets, are to be transferred back to the district upon termination of the transfer agreement, including any extension of the transfer agreement.

(iv) The transfer agreement commits the nonprofit corporation to operate and maintain the district's hospital and its assets for the benefit of the communities served by the district.

(v) The transfer agreement requires that any funds received from the district at the outset of the agreement or any time thereafter during the term of the agreement be used only to reduce district indebtedness, to acquire needed equipment for the district health facilities, to operate, maintain, and make needed capital improvements to the district's health facilities, to provide supplemental health care services or facilities for the communities served by the district, or to conduct other activities that would further a valid public purpose if undertaken directly by the district.

(B) A transfer of 33 percent or more but less than 50 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary

thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and Section 32106.

(ii) The transfer agreement meets all of the requirements of clauses (ii) to (v), inclusive, of subparagraph (A).

(C) A transfer of 10 percent or more but less than 33 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and Section 32106.

(ii) The transfer agreement meets all of the requirements of (iii) to (v), inclusive, of subparagraph (A).

(D) Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(E) Notwithstanding the other provisions of this paragraph, a hospital district shall not transfer any portion of its assets to a private nonprofit organization that is owned or controlled by a religious creed, church, or sectarian denomination in the absence of adequate consideration.

(3) If the district board has previously transferred less than 50 percent of the district's assets pursuant to this subdivision, before any additional assets are transferred the board shall hold a public hearing and shall make a public determination that the additional assets to be transferred will not, in combination with any assets previously transferred, equal 50 percent or more of the total assets of the district.

(4) The amendments to this subdivision made during the 1991–92 Regular Session, and the amendments made to this subdivision and to Section 32126 made during the 1993–94 Regular Session, shall only apply to transfers made on or after the effective dates of the acts amending this subdivision. The amendments to this subdivision made during those sessions shall not apply to any of the following:

(A) A hospital district that has discussed and adopted a board resolution, prior to September 1, 1992, that authorizes the development of a business plan for an integrated delivery system.

(B) A lease agreement, transfer agreement, or both between a hospital district and a nonprofit corporation that were in full force and effect as of September 1, 1992, for as long as that lease agreement, transfer agreement, or both remain in full force and effect.

(5) Notwithstanding paragraph (4), if substantial amendments are proposed to be made to a transfer agreement described in subparagraph (A) or (B) of paragraph (4), the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act, (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(6) Notwithstanding paragraphs (4) and (5), a transfer agreement described in subparagraph (A) or (B) of paragraph (4) that provided for the transfer of less than 50 percent of a district's assets shall be subject to the requirements of subdivision (p) of Section 32121 when subsequent amendments to that transfer agreement would result in the transfer, in sum or by increment, of 50 percent or more of a district's assets to the nonprofit corporation.

(7) For purposes of this subdivision, a "transfer" means the transfer of ownership of the assets of a hospital district. A lease of the real property or the tangible personal property of a hospital district shall not be subject to this subdivision except as specified in Section 32121.4 and as required under Section 32126.

(8) Hospital districts that request a special election pursuant to paragraph (1) or (2) shall reimburse counties for the costs of that special election as prescribed pursuant to Section 23524 of the Elections Code.

(9) Nothing in this section, including subdivision (j), shall be construed to permit a local hospital district to obtain or be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility which is not located within the boundaries of the hospital district.

(10) A transfer of any of the assets of a district to one or more nonprofit corporations to operate and maintain the assets shall not be required to meet paragraphs (1) to (9), inclusive, of this subdivision if all of the following conditions apply at the time of the transfer:

(A) The district has entered into a loan that is insured by the State of California under Chapter 4 (commencing with Section 436) of Part 1 of Division 1.

(B) The district is in default of its loan obligations, as determined by the Office of Statewide Health Planning and Development.

(C) The Office of Statewide Health Planning and Development and the district, in their best judgment, agree the transfer of some or all of the assets of the district to a nonprofit corporation or corporations is necessary to cure the default, and will obviate the

need for foreclosure. This cure of default provision shall be applicable prior to the office foreclosing on district hospital assets. After the office has foreclosed on district hospital assets, or otherwise taken possession in accordance with law, the office may exercise all of its powers to deal with and dispose of hospital property.

(D) The transfer and all arrangements necessary thereto are discussed in advance of the transfer in at least one properly noticed open and public meeting in compliance with the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code and Section 32106. The meeting referred to in this paragraph shall be noticed and held within 90 days of notice in writing to the district by the office of an event of default. If the meeting is not held within this 90-day period, the district shall be deemed to have waived this requirement to have a meeting.

(11) If a transfer under paragraph (10) is a lease, the lease shall provide that the assets shall revert to the district at the conclusion of the leasehold interest. If the transfer is a sale, the proceeds shall be used first to retire the obligation insured by the office, then to retire any other debts of the district. After providing for debts, any remaining funds shall revert to the district.

(q) To contract for bond insurance, letters of credit, remarketing services, and other forms of credit enhancement and liquidity support for its bonds, notes, and other indebtedness and to enter into reimbursement agreements, monitoring agreements, remarketing agreements, and similar ancillary contracts in connection therewith.

(r) To establish, maintain, operate, participate in, or manage capitated health care plans, health maintenance organizations, preferred provider organizations, and other managed health care systems and programs properly licensed by the Department of Insurance or the Department of Corporations, at any location within or without the district for the benefit of residents of communities served by the district. However, that activity shall not be deemed to result in or constitute the giving or lending of the district's credit, assets, surpluses, cash, or tangible goods to, or in aid of, any person, association, or corporation in violation of Section 6 of Article XVI of the California Constitution.

Nothing in this section shall authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.

Any agreement to provide health care coverage that is a health care service plan, as defined in subdivision (f) of Section 1345, shall be subject to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2, unless exempted pursuant to Section 1343 or 1349.2.

A district shall not provide health care coverage for any employee of an employer operating within communities served by the district, unless the Legislature specifically authorizes, or has authorized in this section or elsewhere, the coverage.

This section shall not authorize any district to contribute its facilities to any joint venture that could result in transfer of the facilities from district ownership.

(s) To provide health care coverage to members of the district's medical staff, employees of the medical staff members, and the dependents of both groups, on a self-pay basis.

SEC. 2. Section 32121.4 of the Health and Safety Code is amended to read:

32121.4. Notwithstanding any other provision of law, a hospital district or any affiliated nonprofit corporation, upon a finding by the board of directors of the district that it will be in the best interests of the district to provide additional diversification of facilities, may lease and operate the realty, facilities, and business of another hospital district in California, or create a leasehold interest in its own realty, improvements, and business in favor of another hospital district, if all of the following apply:

(a) That the lease when taken together with any extensions of the lease shall not exceed a total of 30 years.

(b) That the lessee district shall not finance any capital improvements through the use of the lessor district's credit.

(c) That the lessor district shall have successfully completed any feasibility studies required by its board of directors as will reasonably ensure that the lessor hospital's financial stability will not be endangered by the lease transaction.

(d) Nothing in this section shall be construed to impair or limit the authority of the California Medical Assistance Commission to contract for the provision of inpatient hospital services under the Medi-Cal program with local hospital district hospitals as sole distinct entities, even though one or more hospital districts may have entered into leasehold or joint-venture arrangements.

Any lease made pursuant to this section to one or more nonprofit corporations affiliated with a district, that is part of or contingent upon a transfer of 50 percent or more of the district's assets, in sum or by increment, to the affiliated nonprofit corporation shall be subject to the requirements of subdivision (p) of Section 32121.

SEC. 3. Section 32126 of the Health and Safety Code is amended to read:

32126. The board of directors may provide for the operation and maintenance through tenants of the whole or any part of any hospital acquired or constructed by it pursuant to this division, and for that purpose may enter into any lease agreement that it believes will best serve the interest of the district. A lease entered into with one or more nonprofit corporations for the operation of 50 percent or more of the district's hospital, or that is part of or contingent upon a transfer of 50 percent or more of the district's assets, in sum or by increment, as described in subdivision (p) of Section 32121 shall be subject to the requirements of subdivision (p) of Section 32121. Any lease for the operation of any hospital shall require the tenant or lessee to conform to and abide by Section 32128. No lease for the

operation of an entire hospital shall run for a term in excess of 30 years. No lease for the operation of less than an entire hospital shall run for a term in excess of 10 years.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

Moreover, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Also, notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the rights of voters when a transfer of assets from a hospital district to a nonprofit corporation takes place and to ensure that the hospital district board of directors retains some control over the assets after a transfer, it is necessary that this act take effect immediately.

CHAPTER 699

An act relating to the payment of judgments and settlement claims against the State of California, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. The sum of eighteen million six hundred sixty thousand thirteen dollars ($18,660,013) is hereby appropriated in accordance with the following schedule:

(a) Seventeen million two hundred fifty thousand dollars ($17,250,000) from the General Fund to the Director of Finance for allocation to pay the following judgments and settlement claims pursuant to the settlement of the case of Board of Administration of

the Public Employees' Retirement System, et al. v. Davis, et al., (Super. Ct. Sacramento County, No. 363359) as follows:

(1) Eight million nine hundred thousand dollars ($8,900,000) plus interest, as stipulated in the settlement, to the Teacher's Retirement Board.

(2) Seven million five hundred thousand dollars ($7,500,000) plus interest, as stipulated in the settlement, to the Board of Administration of the Public Employees' Retirement System.

(b) One million one hundred thousand dollars ($1,100,000) from the Motor Vehicle Account in the State Transportation Fund to the Attorney General for judgments and settlement claims in the case of Connie Jean Hoke v. Joseph Edward Underhill, (Super. Ct., San Bernardino Co., No. 250100).

(c) Three hundred ten thousand thirteen dollars ($310,013) from the 1992 Higher Education Capital Outlay Bond Fund to the Trustees of the California State University for judgments and settlement claims in the case of Commercial Decontamination Inc. v. Trustees of the California State University, et al., (Super. Ct., Los Angeles Co., No. EAC76127).

SEC. 2. Any funds appropriated by subdivision (a) of Section 1 of this act in excess of the amount needed to pay the judgments and settlement claims shall revert to the General Fund on December 31, 1993.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to pay judgments and settlement claims against the state and end hardship to claimants as quickly as possible, it is necessary for this act to take effect immediately.

CHAPTER 700

An act to amend Section 7337.5 of, and to add Section 7340.5 to, the Business and Professions Code, relating to barbering and cosmetology.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 7337.5 of the Business and Professions Code is amended to read:

7337.5. (a) The board shall adopt regulations providing for the submittal of applications for admission to examination of students of approved cosmetology, electrology, or barbering schools who have completed at least 75 percent of the required course clock hours and

curriculum requirements (60 percent for students of the manicurist course). The regulations shall include provisions that ensure that all proof of qualifications of the applicant are received by the board before the applicant is examined.

(b) An application for examination submitted under this section shall be known as a "preapplication" and an additional preapplication fee may be required.

(c) This section shall become operative on July 1, 1992.

(d) The board shall administer the licensing examination not later than 10 working days after graduation from an approved cosmetology, electrology, or barbering school to students who have submitted an application for admission for examination under the preapplication procedure.

(e) The department shall monitor the board's compliance with subdivision (d). If the department finds an absence of compliance with subdivision (d), the department shall report its findings to the Legislature by July 1, 1994, and shall recommend actions to achieve compliance.

SEC. 2. Section 7340.5 is added to the Business and Professions Code, to read:

7340.5. The department shall monitor the examination process and, in association with the board, shall report to the Legislature by July 1, 1994, on the efficiency of the examination process pursuant to Sections 7338 and 7340.

CHAPTER 701

An act to amend Section 11513 of the Government Code, relating to employment.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 11513 of the Government Code is amended to read:

11513. (a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses, to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical

rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

In any proceeding under subdivision (i) or (j) of Section 12940, or Section 19572 or 19702, alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is not admissible at hearing unless offered to attack the credibility of the complainant, as provided for under subdivision (o). Reputation or opinion evidence regarding the sexual behavior of the complainant is not admissible for any purpose.

(d) The hearing, or any medical examination conducted for the purpose of determining compensation or monetary award, shall be conducted in the English language, except that a party who does not proficiently speak or understand the English language and who requests language assistance shall be provided an interpreter. Except as provided in subdivision (k), interpreters utilized in hearings shall be certified pursuant to subdivision (e). Except as provided in subdivision (k), effective July 1, 1994, interpreters utilized in medical examinations shall be certified pursuant to subdivision (f). The cost of providing the interpreter shall be paid by the agency having jurisdiction over the matter if the administrative law judge or hearing officer so directs, otherwise the party for whom the interpreter is provided.

The administrative law judge's or hearing officer's decision to direct payment shall be based upon an equitable consideration of all the circumstances in each case, such as the ability of the party in need of the interpreter to pay, except with respect to hearings before the Workers' Compensation Appeals Board or the Division of Workers' Compensation relating to workers' compensation claims. With respect to these hearings, the payment of the costs of providing an interpreter shall be governed by the rules and regulations promulgated by the Workers' Compensation Appeals Board or the Administrative Director of the Division of Workers' Compensation, as appropriate.

(e) The State Personnel Board shall establish, maintain, administer, and publish annually, an updated list of certified administrative hearing interpreters it has determined meet the minimum standards in interpreting skills and linguistic abilities in languages designated pursuant to subdivision (g). Any interpreter so

listed may be examined by each employing agency to determine the interpreter's knowledge of the employing agency's technical program terminology and procedures. Court interpreters certified pursuant to Section 68562, and interpreters listed on the State Personnel Board's recommended lists of court and administrative hearing interpreters prior to July 1, 1993, shall be deemed certified for purposes of this subdivision.

(f) The State Personnel Board shall establish, maintain, administer, and publish annually, an updated list of certified medical examination interpreters it has determined meet the minimum standards in interpreting skills and linguistic abilities in languages designated pursuant to subdivision (g). Court interpreters certified pursuant to Section 68562 and administrative hearing interpreters certified pursuant to subdivision (e) shall be deemed certified for purposes of this subdivision.

(g) The State Personnel Board shall designate the languages for which certification shall be established under subdivisions (e) and (f). The languages designated shall include, but not be limited to, Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, and Vietnamese until the State Personnel Board finds that there is an insufficient need for interpreting assistance in these languages. The language designations shall be based on the following:

(1) The language needs of non-English-speaking persons appearing before the administrative agencies, as determined by consultation with the agencies.

(2) The cost of developing a language examination.

(3) The availability of experts needed to develop a language examination.

(4) Other information the board deems relevant.

(h) Commencing July 1, 1993, each certified administrative hearing interpreter shall pay a fee, due on July 1 of each year, for the renewal of his or her certification. Commencing July 1, 1995, each certified medical examination interpreter shall pay a fee, due on July 1 of each year, for the renewal of his or her certification. Court interpreters certified under Section 68562 shall not pay any fees required by this section.

(i) The State Personnel Board shall establish and charge fees for applications to take interpreter examinations and for renewal of certifications. The amount of the fees shall be sufficient to cover the annual projected costs of carrying out this section. If the amount of money collected in fees is not sufficient to cover the costs of carrying out this section, the board shall charge, and be reimbursed, a pro rata share of the additional costs by the state agencies that conduct administrative hearings.

(j) The State Personnel Board may remove the names of people from the list of certified interpreters if any of the following conditions occur:

(1) A person on the list is deceased.

(2) A person on the list notifies the board that he or she is

unavailable for work.

(3) A person on the list does not submit a renewal fee as required by subdivision (h).

(k) In the event that interpreters certified pursuant to subdivision (e) cannot be present at the hearing, the hearing agency shall have discretionary authority to provisionally qualify and utilize other interpreters. In the event that interpreters certified pursuant to subdivision (f) cannot be present at the medical examination, the physician provisionally may utilize another interpreter if that fact is noted in the record of the medical evaluation.

(*l*) Every state agency affected by this section shall advise each party of their right to an interpreter at the same time that each party is advised of the hearing date or medical examination. Each party in need of an interpreter shall also be encouraged to give timely notice to the agency conducting the hearing or medical examination so that appropriate arrangements can be made.

(m) The rules of confidentiality of the agency, if any, that may apply in an adjudicatory hearing, shall apply to any interpreter in the hearing or medical examination, whether or not the rules so state.

(n) The interpreter shall not have had any involvement in the issues of the case prior to the hearing.

As used in subdivisions (d) and (e), the terms "administrative law judge" and "hearing officer" shall not be construed to require the use of an Office of Administrative Hearings' administrative law judge or hearing officer.

(o) Evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is presumed inadmissible absent an offer of proof establishing its relevance and reliability and that its probative value is not substantially outweighed by the probability that its admission will create substantial danger of undue prejudice or confuse the issue.

(p) For purposes of this section "complainant" means any person claiming to have been subjected to conduct which constitutes sexual harassment, sexual assault, or sexual battery.

(q) This section shall become operative on January 1, 1994.

(r) This section shall become inoperative on July 1, 1995, and, as of January 1, 1996, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1996, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. The Employment Development Department shall, not later than October 1, 1994, adopt regulations to clarify the factors by which the employment status of language interpreters will be determined.

CHAPTER 702

An act to amend Sections 1569.691, 1569.694, 1569.695, 1569.696, and 1569.697 of the Health and Safety Code, relating to residential care facilities for the elderly.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1569.691 of the Health and Safety Code is amended to read:

1569.691. (a) The department, shall select and monitor facilities to participate in a program, as model projects, to determine the appropriateness of allowing secured perimeters in residential care facilities for the elderly for persons with dementia, including, but not limited to, Alzheimer's disease.

(b) Model projects shall commence operation during the 1990 calendar year and shall remain in operation until January 1, 1996. The program shall consist of six facilities or sites.

(1) Three sites shall be residential care facilities for the elderly that specialize in caring for persons with the medical diagnosis of dementia and have secured perimeters.

(2) Three sites shall be residential care facilities for the elderly that specialize in caring for persons with the medical diagnosis of dementia and use door alarms or wrist bands, or other types of devices, to provide a safe and secure environment.

(c) The department shall develop criteria and standards for participation in the pilot project, that shall include, but not be limited to, the following:

(1) The facility shall be a residential care facility for the elderly, with licenses in good standing. The facilities shall maintain substantial compliance with all applicable regulations and statutes during the pilot project.

(2) The facility shall have or develop a special program for persons with dementia that shall be reviewed by the department and by the Alzheimer's Diagnostic and Treatment Centers established pursuant to Section 413.

(3) The facility shall submit to the department a plan of operation that includes a description of the type of security, the method used to provide access to the department, visitors, community and advocacy groups, an emergency evacuation plan that has been approved by the local fire authority, staffing standards, qualifications and training of staff, and any other items deemed to be necessary by the department.

(4) The facility shall obtain the appropriate fire clearance from the local fire authority.

(5) Each facility shall have admission, retention, and transfer

criteria to select residents who may be placed in the facility during the pilot project. A resident shall not have other mental or physical health care needs beyond those caused by the dementing illness which would otherwise disqualify that person for acceptance or retention in a residential care facility for the elderly.

(6) The facility shall have a consulting physician to review the medical condition of residents.

(7) The facility shall conduct an admission assessment of the resident prior to admission, that shall include:

(A) A minimental test to assess the resident's level of cognitive impairment.

(B) An activities of daily living assessment.

(C) A behavioral assessment for the purpose of designing and implementing an individualized care plan of therapeutic activities.

The department shall develop criteria for granting exemptions from the requirements of this paragraph for circumstances when emergency placement is necessary.

(8) The facility shall provide a program of planned therapeutic activities that take place throughout the waking hours and include a minimum of 40 percent large motor activities and the balance to be perceptual and sensory stimulation.

(9) The facility shall ensure that all staff who work with the residents go through training consisting of at least 25 hours covering the following issues:

(A) Facility orientation.

(B) Normal aging process.

(C) Characteristics of Alzheimer's disease and related dementias.

(D) Activities for persons with dementia.

(E) Communication with residents with dementia.

(F) Understanding the family of residents with dementia.

(G) Medications and misuse.

(H) Aid to daily living.

(I) Staff burnout.

(J) Developing problem-solving skills.

(10) The facility shall ensure that the staff receives ongoing continuing education in the care of residents with dementia.

(11) The facility shall provide an ongoing assessment of the resident to monitor problem behaviors and medical condition.

(12) The facility shall provide monthly family council meetings.

(d) The department shall consult with the Alzheimer's disease diagnostic and treatment centers funded by the State Department of Health Services pursuant to Section 413 or other agencies deemed appropriate to establish evaluative criteria for appropriate diagnosis, assessment, treatment, and discharge plans for residents of facilities participating in the model projects.

(e) The Health and Welfare Agency's Alzheimer's Disease and Related Disorders Advisory Group, or any other entity, may provide assistance to the department, as requested by the department.

SEC. 2. Section 1569.694 of the Health and Safety Code is

amended to read:

1569.694. (a) The department shall report its findings and recommendations to the Legislature by January 1, 1993. The recommendations shall include whether to allow secured or locked residential care facilities for the elderly throughout the state, and, if so, the method or methods of security to be allowed, admission and retention criteria for residents who can be placed in secure residential care facilities for the elderly, any limits on the size of the facility which may be secured, staffing standards, training and qualifications of staff and program content.

The department shall also report on the success of the model projects by measuring all of the following:

(1) The extent to which the three model project sites with a secured perimeter provide an environment which minimizes acting out or other inappropriate behavior compared with the other model project sites.

(2) The extent to which the use of a secured perimeter environment results in a decrease or elimination of the use of behavioral medication traditionally used to treat residents with dementia compared to the other model project sites.

(3) A comparison of the number of incidences of wandering in the model project sites with a secured perimeter versus model project sites using door alarms, wrist bands, or other similar devices, and the extent to which staff time is diverted away from direct care.

(b) After the release of the report described under subdivision (a), the Health and Welfare Agency shall, by January 1, 1995, convene an advisory group that may be comprised of, but is not limited to, representatives of provider organizations, advocates, the Department of Aging, the State Department of Social Services, the State Long Term Care Ombudsmen, and the Alzheimer's Association to , as appropriate, recommend, based on the report described under subdivision (a) and other relevant information, specific standards for a secured perimeter program.

SEC. 3. Section 1569.695 of the Health and Safety Code is amended to read:

1569.695. Guidelines developed to implement this model project shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code).

SEC. 4. Section 1569.696 of the Health and Safety Code is amended to read:

1569.696. All statutes and regulations applicable to residential care facilities for the elderly shall apply to the model project facilities participating in this model project, except to the extent that they are inconsistent with this article.

SEC. 5. Section 1569.697 of the Health and Safety Code is amended to read:

1569.697. This article shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute

which is chaptered prior to January 1, 1996, deletes or extends that date.

CHAPTER 703

An act to amend Sections 350 and 12022.6 of the Penal Code, relating to counterfeiting.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 350 of the Penal Code is amended to read:

350. (a) Any person who, without the consent of the registrant, willfully manufactures, intentionally sells, or knowingly possesses for sale at the point of sale any counterfeit of a mark registered with the Secretary of State or registered on the Principle Register of the United States Patent and Trademark Office, shall upon conviction, be punishable as follows:

(1) Where the offense involves less than 1,000 of the articles described in this subdivision, if the person is an individual, he or she shall be punished by a fine of not more than five thousand dollars ($5,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment; or, if the person is a corporation, by a fine of not more than one hundred thousand dollars ($100,000).

(2) Where the offense involves 1,000 or more of the articles described in subdivision (a), and if the person is an individual, he or she shall be punished by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months, or two or three years, by a fine not to exceed two hundred fifty thousand dollars ($250,000), or by both that imprisonment and fine; or, if the person is a corporation, by a fine not to exceed five hundred thousand dollars ($500,000).

(b) Any person who has been convicted of a violation of either paragraph (1) or (2) of subdivision (a) shall, upon a subsequent conviction of paragraph (1) of subdivision (a), if the person is an individual, be punished by a fine of not more than fifty thousand dollars ($50,000), by imprisonment in a county jail for not more than one year, or in the state prison for 16 months, or two or three years, or by both that fine and imprisonment; or, if the person is a corporation, by a fine of not more than two hundred thousand dollars ($200,000).

(c) Any person who has been convicted of a violation of subdivision (a) and who, by virtue of the conduct that was the basis of the conviction, has directly and foreseeably caused death or great bodily injury to another through reliance on the counterfeited item

for its intended purpose shall, if the person is an individual, be punished by a fine of not more than fifty thousand dollars ($50,000), by imprisonment in the state prison for two, three, or four years, or by both that fine and imprisonment; or, if that person is a corporation, by a fine of not more than two hundred thousand dollars ($200,000).

(d) Any person who knowingly possesses for sale, at a location other than the point of sale, any article described in subdivision (a) is guilty of a public offense.

(1) A violation of this subdivision involving less than 100 of these articles shall be punishable by imprisonment in a county jail for not more than six months, by a fine not to exceed five thousand dollars ($5,000), or by both that imprisonment and fine. Any person who previously has been convicted of a violation of any paragraph of this subdivision shall, upon a new conviction of violating this subdivision arising from conduct described in this paragraph, be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed ten thousand dollars ($10,000), or by both that imprisonment and fine. Any person who has been convicted of a violation of any paragraph of this subdivision on two or more previous occasions shall, upon a new conviction of violating this paragraph, be punished by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months, or two or three years, by a fine not to exceed twenty-five thousand dollars ($25,000), or by both that imprisonment and fine.

(2) A violation of this subdivision involving 100 or more of these articles, but less than 1,000, shall be punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed ten thousand dollars ($10,000), or by both that imprisonment and fine. Any person who previously has been convicted of a violation of any paragraph of this subdivision on one or more occasions shall, upon a new conviction of violating this subdivision arising from conduct described in this paragraph, be punished by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months, or two or three years, by a fine not to exceed twenty-five thousand dollars ($25,000), or by both that imprisonment and fine.

(3) A violation of this subdivision involving 1,000 or more of these articles shall be punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months, or two or three years, by a fine not to exceed one hundred thousand dollars ($100,000), or by both that imprisonment and fine.

(e) In any action brought under this section resulting in a conviction or a plea of nolo contendere, the court shall order the forfeiture and destruction of all of those marks and of all goods, articles, or other matter bearing the marks, and the forfeiture and destruction or other disposition of all means of making the marks, and any and all electric, mechanical, or other devices for manufacturing, reproducing, transporting, or assembling these marks, which were used in connection with, or which were part of,

any violation of this section. However, no vehicle shall be forfeited under this section that may be lawfully driven on the highway with a class 3 or 4 license, as prescribed in Section 12804 of the Vehicle Code, and that is any of the following:

(1) A community property asset of a person other than the defendant.

(2) The sole class 3 or 4 vehicle available to the immediate family of that person or of the defendant.

(3) Reasonably necessary to be retained by the defendant for the purpose of lawfully earning a living, or for any other reasonable and lawful purpose.

(f) As used in this section, the following definitions shall apply:

(1) "At the point of sale" includes the entire building, structure, container, or vehicle in which the sale or attempted sale of an article has occurred.

(2) "Counterfeit mark" means a spurious mark which is identical with, or substantially indistinguishable from, a registered mark and which is used on or in connection with the same type of goods or services for which the genuine mark is registered.

(3) "Knowingly possess" means that the person possessing an article actually knew that the article was not genuine.

(4) "Sale" includes resale.

(g) This section shall not be enforced against any party who has adopted and lawfully used the same or confusingly similar mark in the rendition of like services or the manufacture or sale of like goods in this state from a date prior to the effective date of registration of the service mark or trademark pursuant to Chapter 2 (commencing with Section 14200) of Division 6 of the Business and Professions Code.

(h) An owner, officer, employee, or agent who provides, rents, leases, licenses, or sells real property upon which a violation of subdivision (a) or (d) occurs shall not be subject to a criminal penalty pursuant to this section, unless he or she sells, or possesses for sale, articles bearing a counterfeit mark in violation of this section. This subdivision shall not be construed to abrogate or limit any civil rights or remedies for a trademark violation.

SEC. 2. Section 12022.6 of the Penal Code is amended to read:

12022.6. When any person takes, damages, or destroys any property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction, the court shall impose an additional term as follows:

(a) If the loss exceeds fifty thousand dollars ($50,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of one year.

(b) If the loss exceeds one hundred fifty thousand dollars ($150,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of two years.

(c) If the loss exceeds one million dollars ($1,000,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of three years.

(d) If the loss exceeds two million five hundred thousand dollars ($2,500,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of four years.

In any accusatory pleading involving multiple charges of taking, damage, or destruction, the additional terms provided in this section may be imposed if the aggregate losses to the victims from all felonies exceed the amounts specified in this section and arise from a common scheme or plan. All pleadings under this section shall remain subject to the rules of joinder and severance stated in Section 954.

The additional terms provided in this section shall not be imposed unless the facts of the taking, damage, or destruction in excess of the amounts provided in this section are charged in the accusatory pleading and admitted or found to be true by the trier of fact.

This section applies to, but is not limited to, property taken, damaged, or destroyed in violation of Section 502 or subdivision (b) of Section 502.7. This section shall also apply to applicable prosecutions for a violation of Section 350, 653h, 653s, or 653w.

(e) It is the intent of the Legislature that the provisions of this section be reviewed within five years to consider the effects of inflation on the additional terms imposed. For that reason, this section shall remain in effect only until January 1, 1998, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State mandates determines that this act contains other costs mandated by the state, reimbursement of local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 704

An act to add Section 25150.4 to the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 25150.4 is added to the Health and Safety Code, to read:

25150.4. Not later than July 1, 1994, the administrator for oil spill response in the Department of Fish and Game and the Director of Toxic Substances Control shall jointly develop a preincident process for the handling and transport of materials used or recovered during an oil spill response. The preincident process shall ensure, through advance approvals or other suitable advance procedures, that materials can be expeditiously removed from cleanup areas consistent with existing law. The process shall provide for, but not be limited to, all of the following:

(a) Transport of materials to destinations where they may be utilized in the manufacture of petroleum or other products.

(b) Transport of materials to locations which have already been permitted for hazardous waste storage, treatment, transfer, resource recovery, or disposal so that material categorization and destination can be expeditiously determined.

(c) Transport of recyclable materials to appropriate locations in a timely manner.

(d) Preapproved procedures for the temporary storage of materials.

CHAPTER 705

An act to add Sections 13173 and 13173.2 to the Water Code, relating to water.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 13173 is added to the Water Code, to read:

13173. "Designated waste" means either of the following:

(a) Hazardous waste that has been granted a variance from hazardous waste management requirements pursuant to Section 25143 of the Health and Safety Code.

(b) Nonhazardous waste that consists of, or contains, pollutants

that, under ambient environmental conditions at a waste management unit, could be released in concentrations exceeding applicable water quality objectives or that could reasonably be expected to affect beneficial uses of the waters of the state as contained in the appropriate state water quality control plan.

SEC. 2. Section 13173.2 is added to the Water Code, to read:

13173.2. The state board, after consultation with the California Integrated Waste Management Board and the Department of Toxic Substances Control, may, as available resources permit, adopt policies with regard to designated wastes to include, but not be limited to, both of the following:

(a) Policies that provide for the means by which a regional board shall identify designated waste and the waters of the state that the waste may potentially impact.

(b) Policies for regional boards with regard to the granting of waivers to make inapplicable the designated waste classification.

CHAPTER 706

An act to amend and repeal Sections 4585, 4586, 4587, 4590, and 4591 of the Public Resources Code, relating to forest practices.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 4585 of the Public Resources Code, as added by Section 3 of Chapter 1290 of the Statutes of 1989, is amended to read:

4585. (a) Within one month after completion of the work described in the timber harvesting plan or nonindustrial timber harvest notice, excluding work for stocking, site preparation, or maintenance of drainage facilities and soil stabilization treatments on skid trails, roads, and landings after the plan period, a report shall be filed by the timber owner or the owner's agent with the department that all work, except stocking, site preparation, or maintenance of drainage facilities and soil stabilization treatments, has been completed.

(b) If all of the work described in the plan has not been completed, a report may be filed annually with respect to a portion of the area covered by the plan which has been completed. The portion completed shall be adequately identified on a map submitted with the report.

SEC. 2. Section 4585 of the Public Resources Code, as amended by Section 4 of Chapter 1290 of the Statutes of 1989, is repealed.

SEC. 3. Section 4586 of the Public Resources Code, as amended by Section 6 of Chapter 915 of the Statutes of 1989, is amended to

read:

4586. Within six months of the receipt of the work completion report specified in Section 4585, the director shall determine, by inspection, whether the work described in the report has been properly completed in conformity with the rules and regulations of the board and the standards of this chapter. If the work has been so completed, the director shall issue a report of satisfactory completion of the work. If not, the director shall take such corrective action as he or she determines to be appropriate in accordance with Article 8 (commencing with Section 4601).

SEC. 4. Section 4586 of the Public Resources Code, as amended by Chapter 676 of the Statutes of 1980, is repealed.

SEC. 5. Section 4587 of the Public Resources Code, as added by Section 7 of Chapter 1290 of the Statutes of 1989, is amended to read:

4587. (a) Within five years after completion of timber operations on an area identified in a report submitted pursuant to Section 4585 or nonindustrial timber harvest notice, a report of stocking with respect to that area shall be filed by the timber owner or the owner's agent with the department. A separate report of stocking may be filed with the work completion report for those areas which meet stocking requirements upon completion of timber operations. The board, by regulation, shall establish one or more statistically valid standardized sampling procedures designed to measure the number of trees and their dispersion.

(b) Notwithstanding subdivision (a), the board shall adopt regulations which specify the conditions and manner in which the necessity of employing sampling procedures may be waived. The regulations shall provide that, in addition to any other possible conditions which may be required by the board, the standard sampling procedures may be waived only if the director or the director's representative and the timber owner, or a registered professional forester acting as the owner's agent, agree that the area is adequately stocked to meet the standards of this chapter and any applicable rules or regulations of the board. The regulations shall require that, if the director or the director's representative does not agree that the area is so stocked, a standardized sample shall be required.

SEC. 6. Section 4587 of the Public Resources Code, as amended by Section 8 of Chapter 1290 of the Statutes of 1989, is repealed.

SEC. 7. Section 4590 of the Public Resources Code, as amended by Chapter 915 of the Statutes of 1989, is amended to read:

4590. (a) (1) A timber harvesting plan is effective for a period of not more than three years, unless extended pursuant to paragraph (2).

(2) A timber harvesting plan on which work has been commenced but not completed may be extended by amendment for a one-year period in order to complete the work, up to a maximum of two one-year extensions, if (A) good cause is shown and (B) all timber operations are in conformance with the plan, this chapter,

and all applicable rules and regulations, upon the filing of the notice of extension as required by this paragraph. The extension shall apply to any area covered by the plan for which a report has not been submitted under Section 4585. The notice of extension shall be provided to the department not sooner than 30 days, but at least 10 days, prior to the expiration date of the plan. The notice shall include the circumstances which prevented a timely completion of the work under the plan and, consistent with Section 4583, an agreement to comply with this chapter and the rules and regulations of the board as they exist on the date the extension notice is filed.

(b) Stocking work may continue for more than the effective period of the plan under subdivision (a), but shall be completed within five years after the conclusion of other work.

SEC. 8. Section 4590 of the Public Resources Code, as added by Chapter 880 of the Statutes of 1973, is repealed.

SEC. 9. Section 4591 of the Public Resources Code, as amended by Chapter 915 of the Statutes of 1989, is amended to read:

4591. Amendments to the original timber harvesting plan may be submitted detailing proposed changes from the original plan. Substantial deviations from the original plan shall not be undertaken until the amendment has been filed with, and acted upon, by the department in accordance with Sections 4582.7 and 4583. An amendment may not extend the effective period of the plan, except as provided in Section 4590.

SEC. 10. Section 4591 of the Public Resources Code, as amended by Chapter 1300 of the Statutes of 1976, is repealed.

CHAPTER 707

An act to add Section 60005 to the Education Code, relating to education.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 60005 is added to the Education Code, to read:

60005. (a) The Legislature finds and declares that it is in the public interest for the State Board of Education to adopt policies and procedures concerning the development of curriculum frameworks and the adoption of instructional materials only after public notice, comment by the public, and review by the Office of Administrative Law and for these policies and procedures to be published in the California Code of Regulations. Therefore, the Legislature reaffirms that the policies and procedures concerning the development of curriculum frameworks and the adoption of instructional materials

shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. These policies and procedures include, but are not limited to, the following:

(1) Board policies that define statutory terms.

(2) Board policies that prescribe the membership of committees used in the development and adoption process.

(3) Procedures that regulate public participation in the development of curriculum frameworks and the adoption of instructional materials.

(b) The board shall adopt as regulations the policies and procedures concerning the development of curriculum frameworks and the adoption of instructional materials.

(c) (1) The following shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code:

(A) The content of curriculum frameworks.

(B) Evaluation criteria and worksheets developed to supplement curriculum frameworks.

(2) The board shall adopt the content of curriculum frameworks and evaluation criteria and worksheets developed to supplement curriculum frameworks in accordance with the regulations established pursuant to subdivision (b) of this section.

SEC. 2. This act shall become operative on January 1, 1995.

CHAPTER 708

An act to amend Section 2825 of the Fish and Game Code, relating to natural community conservation.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 2825 of the Fish and Game Code is amended to read:

2825. (a) The department may prepare nonregulatory guidelines for the development and implementation of natural community conservation plans. The guidelines are exempt from Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code. The guidelines may include, but are not limited to, all of the following:

(1) Defining the scope of a conservation planning area.

(2) Determining conservation standards, guidelines, and objectives for the planning area.

(3) Appointing one or more advisory committees to review and make recommendations regarding the preparation and

implementation of natural community conservation plans.

(4) Coordinating with local, state, and federal agencies, including the Trade and Commerce Agency.

(5) Incorporating public input.

(6) Ensuring compatibility with the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).

(7) Obtaining approval of the natural community conservation plan by the department.

(8) Provisions for implementation of the plan.

(9) Monitoring and reporting on plan implementation.

(10) Amending the plan consistent with the initial intent of the plan.

(b) Nothing in this chapter exempts projects proposed in a natural community conservation planning area from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(c) Natural community conservation plans, as appropriate, shall be implemented pursuant to Section 2081.

(d) To the extent practicable, implementation of natural community conservation plans shall use the services of either the California Conservation Corps or local community conservation corps.

CHAPTER 709

An act to amend Section 63.1 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 1, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 63.1 of the Revenue and Taxation Code is amended to read:

63.1. (a) Notwithstanding any other provision of this chapter, a change in ownership shall not include either of the following purchases or transfers for which a claim is filed pursuant to this section:

(1) The purchase or transfer of real property which is the principal residence of an eligible transferor in the case of a purchase or transfer between parents and their children.

(2) The purchase or transfer of the first one million dollars ($1,000,000) of full cash value of all other real property of an eligible transferor in the case of a purchase or transfer between parents and their children.

(b) (1) For purposes of paragraph (1) of subdivision (a), "principal residence" means a dwelling for which a homeowner's

exemption or a disabled veteran's residence exemption has been granted in the name of the eligible transferor. "Principal residence" includes only that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for the residence.

(2) For purposes of paragraph (2) of subdivision (a), the one million dollar ($1,000,000) exclusion shall apply separately to each eligible transferor with respect to all purchases by and transfers to eligible transferees on and after November 6, 1986, of real property, other than the principal residence, of that eligible transferor. The exclusion shall not apply to any property in which the eligible transferor's interest was received through a transfer, or transfers, excluded from change in ownership by the provisions of either subdivision (f) of Section 62 or subdivision (b) of Section 65, unless the transferor qualifies as an original transferor under subdivision (b) of Section 65. In the case of any purchase or transfer subject to this paragraph involving two or more eligible transferors, the transferors may elect to combine their separate one million dollar ($1,000,000) exclusions and, upon making that election, the combined amount of their separate exclusions shall apply to any property jointly sold or transferred by the electing transferors, provided that in no case shall the amount of full cash value of real property of any one eligible transferor excluded under this election exceed the amount of the transferor's separate unused exclusion on the date of the joint sale or transfer.

(c) As used in this section:

(1) "Purchase or transfer between parents and their children" means either a transfer from a parent or parents to a child or children of the parent or parents or a transfer from a child or children to a parent or parents of the child or children. For purposes of this section, the date of any transfer between parents and their children under a will or intestate succession shall be the date of the decedent's death, if the decedent died on or after November 6, 1986.

(2) "Children" means any of the following:

(A) Any child born of the parent or parents, except a child, as defined in subparagraph (D), who has been adopted by another person or persons.

(B) Any stepchild of the parent or parents and the spouse of that stepchild while the relationship of stepparent and stepchild exists. For purposes of this paragraph, the relationship of stepparent and stepchild shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving stepparent.

(C) Any son-in-law or daughter-in-law of the parent or parents. For the purposes of this paragraph, the relationship of parent and son-in-law or daughter-in-law shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce or, if the relationship is terminated by death, until the remarriage of

the surviving son-in-law or daughter-in-law.

(D) Any child adopted by the parent or parents pursuant to statute, other than an individual adopted after reaching the age of 18 years.

(3) "Full cash value" means full cash value, as defined in Section 2 of Article XIII A of the California Constitution and Section 110.1, with any adjustments authorized by those sections, and the full value of any new construction in progress, determined as of the date immediately prior to the date of a purchase by or transfer to an eligible transferee of real property subject to this section.

(4) "Eligible transferor" means a parent or child of an eligible transferee.

(5) "Eligible transferee" means a parent or child of an eligible transferor.

(6) "Real property" means real property as defined in Section 104. Real property does not include any interest in a legal entity.

(7) "Transfer" includes, and is not limited to, any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust.

(d) (1) The exclusions provided for in subdivision (a) shall not be allowed unless the eligible transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate files a claim with the assessor for the exclusion sought and furnishes to the assessor each of the following:

(A) A written certification by the transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate made under penalty of perjury that the transferee is a parent or child of the transferor.

(B) A copy of a written certification by the transferor, the transferor's legal representative, or the executor or administrator of the transferor's estate made under penalty of perjury that the transferor is a parent or child of the transferee. The written certification shall also include either or both of the following:

(i) If the purchase or transfer of real property includes the purchase or transfer of residential real property, a certification that the residential real property is or is not the transferor's principal residence.

(ii) If the purchase or transfer of real property includes the purchase or transfer of real property other than the transferor's principal residence, a certification that other real property of the transferor that is subject to this section has or has not been previously sold or transferred to an eligible transferee, the total amount of full cash value, as defined in subdivision (c), of any real property subject to this section that has been previously sold or transferred by that transferor to eligible transferees, the location of that real property, the Social Security number of each eligible transferor, and the names of the eligible transferees of that property.

(2) If the full cash value of the real property purchased by or

transferred to the transferee exceeds the permissible exclusion of the transferor or the combined permissible exclusion of the transferors, in the case of a purchase or transfer from two or more joint transferors, taking into account any previous purchases by or transfers to an eligible transferee from the same transferor or transferors, the transferee shall specify in his or her claim the amount and the allocation of the exclusion he or she is seeking. Within any appraisal unit, as determined in accordance with subdivision (e) of Section 51 by the assessor of the county in which the real property is located, the exclusion shall be applied only on a pro rata basis, however, and shall not be applied to a selected portion or portions of the appraisal unit.

(e) The State Board of Equalization shall design the form for claiming eligibility. Any claim under this section shall be filed:

(1) For transfers of real property between parents and their children occurring prior to September 30, 1990, within three years after the date of the purchase or transfer of real property for which the claim is filed.

(2) For transfers of real property between parents and their children occurring on or after September 30, 1990, within three years after the date of the purchase or transfer of real property for which the claim is filed, or prior to transfer of the real property to a third party, whichever is earlier.

(3) Notwithstanding paragraphs (1) and (2), a claim shall be deemed to be timely filed if it is filed within six months after the date of mailing of a notice of supplemental or escape assessment, issued as a result of the purchase or transfer of real property for which the claim is filed.

(4) Unless otherwise expressly provided, the provisions of this subdivision shall apply to any purchase or transfer of real property that occurred on or after November 6, 1986.

(f) The assessor shall report quarterly to the State Board of Equalization all purchases or transfers, other than purchases or transfers involving a principal residence, for which a claim for exclusion is made pursuant to subdivision (d). Each report shall contain the assessor's parcel number for each parcel for which the exclusion is claimed, the amount of each exclusion claimed, the Social Security number of each eligible transferor, and any other information the board shall require in order to monitor the one million dollar ($1,000,000) limitation in paragraph (2) of subdivision (a).

(g) This section shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree. Nothing in this subdivision shall be construed as conflicting with paragraph (1) of subdivision (c) or the general principle that transfers by reason of death occur at the time of death.

(h) This section shall apply to purchases and transfers of real property completed on or after November 6, 1986, and shall not be effective for any change in ownership, including a change in

ownership arising on the date of a decedent's death, that occurred prior to that date.

CHAPTER 710

An act to amend Sections 27361.4, 27364, and 27366 of the Government Code, relating to recorder fees.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 27361.4 of the Government Code is amended to read:

27361.4. (a) The board of supervisors of any county may provide for an additional fee of one dollar ($1) for filing every instrument, paper, or notice for record, in order to defray the cost of converting the county recorder's document storage system to micrographics. Upon completion of the conversion and payment of the costs therefor, this additional fee shall no longer be imposed.

(b) The board of supervisors of any county may provide for an additional fee, other than the fees authorized in subdivisions (a) and (c), of one dollar ($1) for filing every instrument, paper, or notice for record provided that the resolution providing for the additional fee establishes the days of operation of the county recorder's offices as every business day except for legal holidays and those holidays designated as judicial holidays pursuant to Section 135 of the Code of Civil Procedure.

(c) The board of supervisors of any county may provide for an additional fee, other than the fees authorized in subdivisions (a) and (b), of one dollar ($1) for filing every instrument, paper, or notice for record provided that the resolution providing for the additional fee requires that the instrument, paper, or notice be indexed within two business days after the date of recordation.

SEC. 2. Section 27364 of the Government Code is amended to read:

27364. The fee for each certificate under seal shall be set by the board of supervisors in an amount necessary to recover the direct and indirect costs of providing the product or service or the cost of enforcing any regulation for which the fee or charge is levied.

SEC. 3. Section 27366 of the Government Code is amended to read:

27366. The fee for any copy of any other record or paper on file in the office of the recorder, when the copy is made by the recorder, shall be set by the board of supervisors in an amount necessary to recover the direct and indirect costs of providing the product or service or the cost of enforcing any regulation for which the fee or

charge is levied.

CHAPTER 711

An act to amend Section 12940 of the Government Code, relating to fair employment.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) A critical element in eliminating discrimination is the education and training of employers and employees.

(b) A strong statement of the scope of what constitutes discrimination is a vital piece of information for employers and employees.

(c) The legal prohibitions against harassment because of sex have always included sexual harassment, gender harassment, and pregnancy harassment.

(d) Explicitly listing sexual harassment, gender harassment, and pregnancy harassment in the Fair Employment and Housing Act will more clearly identify them, for purposes of education and training, as harassment because of sex.

SEC. 2. Section 12940 of the Government Code is amended to read:

12940. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions or privileges of employment.

(1) Nothing in this part shall prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health and safety of others even with reasonable

accommodations.

(2) Nothing in this part shall prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam era veterans.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of any person, to exclude, expel or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of the person discriminated against.

(d) For any employer or employment agency, unless specifically acting in accordance with federal equal employment opportunity guidelines and regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an

application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex, or any intent to make that limitation, specification or discrimination. Except as provided in the Americans with Disabilities Act of 1990 (Public Law 101-336) and the regulations adopted pursuant thereto, nothing in this subdivision shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition, or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.

(e) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code, which prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(f) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(g) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(h) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age, to harass an employee or applicant. Harassment of an employee or applicant by an employee other than an agent or supervisor shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) This subdivision is declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision thereof, and cities.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit.

(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

(4) For other types of discrimination as enumerated in subdivision (a), an employer remains as defined in subdivision (c) of Section 12926.

(5) Nothing contained in this subdivision shall be construed to apply the definition of employer found in this subdivision to subdivision (a).

(i) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(j) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(k) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.

(*l*) Initial application of this section to discrimination by employers on the basis of mental disability shall be in accordance with the following schedule:

(1) Commencing January 1, 1993, for employers with 25 or more employees, the state, and its municipalities and political subdivisions.

(2) Commencing July 26, 1994, for all other employers specified in paragraph (2) of the subdivision of Section 12926 that defines "employer."

SEC. 3. Section 12940 of the Government Code is amended to read:

12940. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions or privileges of employment.

(1) Nothing in this part shall prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health and safety of others even with reasonable accommodations.

(2) Nothing in this part shall prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam era veterans.

(b) For a labor organization, because of the race, religious creed,

color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of any person, to exclude, expel or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of the person discriminated against.

(d) For any employer or employment agency, unless specifically acting in accordance with federal equal employment opportunity guidelines and regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex, or any intent to make that limitation, specification or discrimination. Except as provided in the Americans with Disabilities Act of 1990 (Public Law 101-336) and the regulations adopted pursuant thereto, nothing in this subdivision shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition, or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.

(e) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code, which prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(f) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(g) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(h) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age, to harass an employee, an applicant for employment, or a volunteer worker. Harassment of an employee, an applicant for employment, or a volunteer worker by an employee other than an agent or supervisor shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) This subdivision is declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons, or receiving the services of one or more persons without the payment of compensation therefor, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision thereof, and cities.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit.

(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

(D) For purposes of this subdivision, "volunteer" means the rendering of services without compensation. "Compensation" means remuneration whether by way of salary, fee, or other consideration for services rendered. However, the payment of per diem, mileage, or other reimbursement expenses to a director or executive officer does not affect that person's status as a volunteer worker within the meaning of this subdivision.

(4) For other types of discrimination as enumerated in subdivision (a), an employer remains as defined in subdivision (c) of Section 12926.

(5) Nothing contained in this subdivision shall be construed to apply the definition of employer found in this subdivision to subdivision (a).

(6) Nothing in this subdivision shall be construed as conferring any employee benefits or protections on a volunteer worker, other than the protections against harassment provided by this subdivision.

(i) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(j) For an employer or other entity covered by this part to refuse

to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(k) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.

(*l*) Initial application of this section to discrimination by employers on the basis of mental disability shall be in accordance with the following schedule:

(1) Commencing January 1, 1993, for employers with 25 or more employees, the state, and its municipalities and political subdivisions.

(2) Commencing July 26, 1994, for all other employers specified in paragraph (2) of the subdivision of Section 12926 that defines "employer."

SEC. 4. Section 3 of this bill incorporates amendments to Section 12940 of the Government Code proposed by both this bill and SB 946. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 12940 of the Government Code, and (3) this bill is enacted after SB 946, in which case Section 2 of this bill shall not become operative.

CHAPTER 712

An act to amend Sections 15819.25 and 15819.27 of the Government Code, relating to schools, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 15819.25 of the Government Code is amended to read:

15819.25. (a) The necessary funding for the construction of the California State Prison-Monterey County (Soledad) authorized by Article 5.5 (commencing with Section 2045.10) of Title 1 of Part 3 of the Penal Code may be obtained through lease-purchase financing arrangements. Sections 15819.1 to 15819.13, inclusive, and Section 15819.15 shall apply for this purpose, provided that the following apply:

(1) "Prison facility," as used in Section 15819.1, includes the California State Prison-Monterey County (Soledad).

(2) Notwithstanding the limitation imposed by Section 15819.3 regarding the amount of bonds to be issued for construction, acquisition, and financing of prison facilities, the State Public Works Board may issue additional bonds in order to pay the costs of acquiring and constructing or refinancing the California State Prison-Monterey County (Soledad).

(b) Notwithstanding Section 13340, funds derived from the lease-purchase financing methods for the California State Prison-Monterey County (Soledad) deposited in the State Treasury, are hereby continuously appropriated to the State Public Works Board on behalf of the Department of Corrections for the purpose of acquiring and constructing or refinancing the prison facility so financed.

The sum of two hundred six million eight hundred thousand dollars ($206,800,000) shall be available for capital outlay for the California State Prison-Monterey County (Soledad) from funds derived from lease-purchase financing methods. This amount shall be available, as necessary, for the purposes of site studies and suitability reports, site acquisition, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, long lead and equipment items, and mitigation costs of school districts if the mitigation item is an allowable cost for any program under the jurisdiction of the State Allocation Board.

(c) The State Public Works Board may authorize the augmentation of the cost of construction of the project set forth in this section pursuant to the board's authority under Section 13332.11.

In addition, the State Public Works Board may authorize any additional amount necessary to establish a reasonable construction reserve and to pay the costs of financing, including the payment of interest during acquisition or construction of the project, the cost of financing a reasonably required debt service reserve fund, and the cost of issuance of permanent financing for the project. This additional amount may include interest payable on any interim loan for the facility from the General Fund or the Pooled Money Investment Account pursuant to Section 16312.

SEC. 2. Section 15819.27 of the Government Code is amended to read:

15819.27. (a) The necessary funding for the construction of the prison facility authorized by Section 3 of Chapter 981 of the Statutes of 1990 may be obtained through lease-purchase financing arrangements. Sections 15819.1 to 15819.13, inclusive, and Section 15819.15 shall apply for this purpose, provided that the following also applies:

(1) "Prison facility," as used in Section 15819.1 includes the California State Prison-Madera County.

(2) Notwithstanding the limitation imposed by Section 15819.3 regarding the amount of bonds to be issued for construction, acquisition, and financing of prison facilities, the State Public Works Board may issue additional bonds in order to pay the costs of acquiring and constructing or refinancing the prison facility authorized by Section 3 of Chapter 981 of the Statutes of 1990.

(b) Notwithstanding Section 13340, funds derived from the lease-purchase financing methods for the prison facility authorized by Section 3 of Chapter 981 of the Statutes of 1990 deposited in the State Treasury, are hereby continuously appropriated to the State Public Works Board on behalf of the Department of Corrections for the purpose of acquiring and constructing or refinancing the prison facility so financed.

Funds so appropriated shall be available as necessary for the purposes of site acquisition, site studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, long lead and equipment items, and mitigation costs of school districts if the mitigation item is an allowable cost for any program under the jurisdiction of the State Allocation Board.

The sum of one hundred fifty-two million dollars ($152,000,000) shall be available for capital outlay for the prison facility authorized by Section 3 of Chapter 981 of the Statutes of 1990 from funds derived from lease-purchase financing methods.

(c) The State Public Works Board may authorize the augmentation of the cost of construction of the project set forth in this section pursuant to the board's authority under Section 13332.11. In addition, the State Public Works Board may authorize any additional amounts necessary to establish a reasonable construction reserve and to pay the costs of financing, including the payment of

interest during acquisition or construction of the project, the cost of financing a debt service reserve fund, and the cost of issuance of permanent financing for the project. This additional amount may include interest payable on any interim loan for the facility from the General Fund or the Pooled Money Investment Account pursuant to Section 16312.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for provisions affecting specified lease-purchase financing mechanisms to be in place prior to the issuance of applicable lease-purchase financing, it is necessary that this act take effect immediately.

CHAPTER 713

An act to amend Section 6004 of, and to add Section 6025.6 to, the Water Code, relating to water.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 6004 of the Water Code is amended to read:

6004. (a) No obstruction in a canal used to raise or lower water therein or divert water therefrom, no levee, including but not limited to a levee on the bed of a natural lake the primary purpose of which levee is to control floodwaters, no railroad fill or structure, and no road or highway fill or structure, no circular tank constructed of steel or concrete, or both, no tank elevated above the ground, and no barrier which is not across a stream channel, watercourse, or natural drainage area and which has the principal purpose of impounding water for agricultural use shall be considered a dam.

(b) No obstruction in the channel of a stream or watercourse which is 15 feet or less in height from the lowest elevation of the obstruction and which has the single purpose of spreading water within the bed of the stream or watercourse upstream from the obstruction for percolation underground shall be considered a dam.

(c) The levee of an island adjacent to tidal waters in the Sacramento-San Joaquin Delta, as defined in Section 12220, even when used to impound water, shall not be considered a dam and the impoundment shall not be considered a reservoir if the maximum possible water storage elevation of the impounded water does not exceed four feet above mean sea level, as established by the United States Geological Survey 1929 datum.

(d) No noncircular tank, constructed of steel or concrete, or both,

that is constructed in a county of the third class by a public agency, under the supervision of a civil engineer registered in the state, that does not exceed 75 acre feet in capacity or 30 feet in height, and no barrier that is not across a stream channel, watercourse, or natural drainage area and that has the principal use as a sewage sludge drying facility shall be considered a dam.

SEC. 2. Section 6025.6 is added to the Water Code, to read:

6025.6. (a) An owner of a structure defined as a dam pursuant to Section 6002, but excluded from that definition pursuant to subdivision (d) of Section 6004 or otherwise exempted from the requirements of this chapter pursuant to Section 6025.5, shall comply with the requirements of Section 8589.5 of the Government Code and shall employ a civil engineer who is registered in the state to supervise the structure for the protection of life and property for the full operating life of the structure.

(b) (1) The civil engineer supervising a dam pursuant to subdivision (a) shall take into consideration, in determining whether or not a dam constitutes, or would constitute, a danger to life or property, the possibility that the dam might be endangered by seepage, earth movement, or other conditions that exist, or might occur, in any area in the vicinity of the dam.

(2) If the civil engineer determines that a dam under his or her supervision constitutes, or would constitute, a danger to life or property, the civil engineer shall notify the owner of the dam and recommend appropriate action.

(c) The owner shall submit to the department the name, business address, and telephone number of each supervising civil engineer.

(d) The department shall submit the information provided pursuant to subdivision (c) to the Office of Emergency Services on or before January 1, 1995, and on or before each January 1 thereafter. Any change in the information shall be submitted to the department on or before July 1 of each year.

CHAPTER 714

An act to amend Section 31676.01 of the Government Code, relating to public retirement.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 31676.01 of the Government Code, as added by Chapter 61 of the Statutes of 1993, is amended to read:

31676.01. This section shall be operative in a county at such time or times as may be mutually agreed to in memoranda of understanding executed by the employer and employee

representatives if the board of supervisors adopts, by majority vote, a resolution declaring that the section shall be operative in the county. Notwithstanding any other provisions of this chapter, the current service pension, or the current service pension combined with the prior service pension, is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-ninetieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

Age of Retirement	Fraction
50	.7091
50¼	.7183
50½	.7274
50¾	.7366
51	.7457
51¼	.7547
51½	.7637
51¾	.7726
52	.7816
52¼	.7907
52½	.7999
52¾	.8090
53	.8181
53¼	.8275
53½	.8369
53¾	.8462
54	.8556
54¼	.8656
54½	.8755
54¾	.8855
55	.8954
55¼	.9061
55½	.9168
55¾	.9275
56	.9382
56¼	.9498
56½	.9614
56¾	.9730
57	.9846
57¼	.9972
57½	1.0098
57¾	1.0224

58	1.0350
58¼	1.0487
58½	1.0625
58¾	1.0762
59	1.0899
59¼	1.1049
59½	1.1199
59¾	1.1349
60	1.1500
60¼	1.1611
60½	1.1723
60¾	1.1835
61	1.1947
61¼	1.2097
61½	1.2247
61¾	1.2398
62	1.2548
62¼	1.2707
62½	1.2867
62¾	1.3026
63	1.3186
63¼	1.3355
63½	1.3525
63¾	1.3695
64	1.3865
64¼	1.4047
64½	1.4229
64¾	1.4411
65 and over	1.4593

The fractions herein set forth shall be used until adjusted by each board for its retirement system in accordance with the interest and mortality tables adopted by each such board with respect to its retirement system.

In any county operating under this section any limitation in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

CHAPTER 715

An act to add Section 594.7 to the Penal Code, relating to vandalism.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 594.7 is added to the Penal Code, to read:

594.7. Notwithstanding paragraphs (3) and (4) of subdivision (b) of Section 594, every person who, having been convicted previously of vandalism under Section 594 for maliciously defacing with paint or any other liquid any real or personal property not his or her own on two separate occasions and having been incarcerated pursuant to a sentence, a conditional sentence, or a grant of probation for at least one of the convictions, is subsequently convicted of vandalism under Section 594, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 716

An act to amend Section 16809.3 of the Welfare and Institutions Code, relating to county health services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 16809.3 of the Welfare and Institutions Code is amended to read:

16809.3. (a) Beginning in the 1991–92 fiscal year, and in each fiscal year thereafter, a county shall pay the amount listed below to the department as a condition of participation in the County Medical Services Program administered pursuant to Section 16809:

Jurisdiction	Amount
Alpine	$ 661
Amador	17,107
Butte	459,610
Calaveras	46,969
Colusa	28,997
Del Norte	39,424
El Dorado	233,492
Glenn	33,989
Humboldt	430,851
Imperial	249,786
Inyo	18,950
Kings	195,053
Lassen	17,206
Madera	151,434
Marin	576,233
Mariposa	5,649
Modoc	9,688
Mono	53,168
Napa	142,767
Nevada	42,051
Plumas	23,796
San Benito	37,018
Shasta	294,369
Sierra	6,183
Siskiyou	48,956
Solano	809,548
Sonoma	718,947
Sutter	188,781
Tehama	79,950
Trinity	8,319
Tuolumne	34,947
Yuba	101,907

(b) Beginning in the 1991–92 fiscal year and in each fiscal year thereafter, counties which did not contract with the department pursuant to Section 16709 during the 1990–91 fiscal year shall pay the following amount to the department as a condition of participation in the County Medical Services Program, administered pursuant to Section 16809:

Jurisdiction	Amount
Lake	$150,278
Mendocino	247,578
Merced	488,954
Placer	247,193
San Luis Obispo	358,571
Santa Cruz	678,868
Yolo	532,510

(c) (1) County amounts specified in subdivisions (a) and (b) shall be paid to the department in 12 equal monthly payments according to the procedures specified by the department. Subject to paragraphs (2) and (3), a county that does not pay the amounts specified in subdivision (a) or (b) may be terminated from participation in the program.

(2) A county may request, due to financial hardship, that payments specified under subdivisions (a) and (b) be delayed. The request shall be subject to the approval of the Small County Advisory Committee.

(3) For the 1991–92 fiscal year and subsequent fiscal years, counties that enter the County Medical Services Program shall pay the amount specified in subdivision (a) or (b), as applicable, on a prorated basis, for the number of contracted months of participation in the County Medical Services Program.

(d) The payments required by subdivision (c) shall not be paid for with funds from the health account of the local health and welfare trust fund established pursuant to Section 17600.10.

(e) The department shall reduce the amounts specified in subdivision (b) if the revenue authority provided for in either Section 29550 of the Government Code, or Section 97 of the Revenue and Taxation Code, or both, which is effective on or after September 1, 1991, is reduced by enactment of legislation or by judicial order, unless those county general purpose revenues are replaced in the 1991–92 fiscal year and subsequent fiscal years by county general purpose revenue authority which, when added to the remaining revenue authority, will be equal to the revenue authority made available to the counties during the 1991–92 fiscal year.

SEC. 2. Section 16809.3 of the Welfare and Institutions Code is amended to read:

16809.3. (a) Beginning in the 1991–92 fiscal year, and in each fiscal year thereafter, a county shall pay the amount listed below to the department as a condition of participation in the County Medical Services Program administered pursuant to Section 16809:

Jurisdiction	Amount
Alpine	$ 661
Amador	17,107
Butte	459,610
Calaveras	30,401
Colusa	28,997
Del Norte	39,424
El Dorado	233,492
Glenn	33,989
Humboldt	430,851
Imperial	249,786
Inyo	18,950
Kings	195,053
Lassen	17,206
Madera	151,434
Marin	576,233
Mariposa	5,649
Modoc	9,688
Mono	25,469
Napa	142,767
Nevada	42,051
Plumas	23,796
San Benito	37,018
Shasta	294,369
Sierra	6,183
Siskiyou	48,956
Solano	809,548
Sonoma	718,947
Sutter	188,781
Tehama	79,950
Trinity	8,319
Tuolumne	34,947
Yuba	101,907

(b) Beginning in the 1991–92 fiscal year and in each fiscal year thereafter, counties which did not contract with the department pursuant to Section 16709 during the 1990–91 fiscal year shall pay the following amount to the department as a condition of participation in the County Medical Services Program, administered pursuant to Section 16809:

Jurisdiction	Amount
Lake	$150,278
Mendocino	247,578
Merced	488,954
Placer	247,193
San Luis Obispo	358,571
Santa Cruz	678,868
Yolo	532,510

(c) (1) County amounts specified in subdivisions (a) and (b) shall be paid to the department in 12 equal monthly payments according to the procedures specified by the department. Subject to paragraphs (2) and (3), a county that does not pay the amounts specified in subdivision (a) or (b) may be terminated from participation in the program.

(2) A county may request, due to financial hardship, that payments specified under subdivisions (a) and (b) be delayed. The request shall be subject to the approval of the Small County Advisory Committee.

(3) For the 1991–92 fiscal year and subsequent fiscal years, counties that enter the County Medical Services Program shall pay the amount specified in subdivision (a) or (b), as applicable, on a prorated basis, for the number of contracted months of participation in the County Medical Services Program.

(d) The payments required by subdivision (c) shall not be paid for with funds from the health account of the local health and welfare trust fund established pursuant to Section 17600.10.

(e) The department shall reduce the amounts specified in subdivision (b) if the revenue authority provided for in either Section 29550 of the Government Code, or Section 97 of the Revenue and Taxation Code, or both, which is effective on or after September 1, 1991, is reduced by enactment of legislation or by judicial order, unless those county general purpose revenues are replaced in the 1991–92 fiscal year and subsequent fiscal years by county general purpose revenue authority which, when added to the remaining revenue authority, will be equal to the revenue authority made available to the counties during the 1991–92 fiscal year.

SEC. 3. Section 2 of this bill incorporates amendments to Section 16809.3 of the Welfare and Institutions Code proposed by this bill and AB 1088. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 16809.3 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1088, in which case Section 16809.3 of the Welfare and Institutions Code, as amended by AB 1088, shall remain operative only until the operative date of this bill, at which time Section 2 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that, at the earliest possible time, an equitable payment system for a county contracting with the State Department of Health Services under the County Medical Services Program, it is necessary that this act go into immediate effect.

CHAPTER 717

An act to amend Section 19618 of the Business and Professions Code, relating to horseracing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 19618 of the Business and Professions Code is amended to read:

19618. (a) Except as provided in Article 9.2 (commencing with Section 19605), no person licensed under this chapter to conduct a racing meeting shall pay or distribute to, or on behalf of, any horse owner, any agent, or person or organization representing any horse owner or owners, purses, or any other type of consideration to, or for, the benefit of horsemen, other than that expressly provided in this chapter.

(b) Except as provided in Article 9.2 (commencing with Section 19605), no horse owner, any agent, or person or organization representing any horse owner or owners, shall receive, solicit, or obtain from any person licensed under this chapter to conduct a race meeting, purses, or any other type of consideration to, or for, the benefit of horsemen, other than that expressly provided in this chapter.

(c) No plaque, cup, tray, ribbon, trophy, or similar award given in recognition of achievement or special event is deemed to be consideration for the purpose of subdivisions (a) and (b).

(d) Subdivisions (a) and (b) do not apply to any payment by an association in connection with any match race or special racing event.

(e) Notwithstanding subdivision (a) or (b), or any other provision of law, the horsemen's organization which represents the horsemen participating in a racing meeting and a licensed racing association may enter into an agreement which provides for the division of, and sharing by the organization and the association of, the interest earned on the association's paymaster accounts during racing

meetings conducted prior to, during, or subsequent to, 1990, if both of the following conditions are satisfied:

(1) The agreement is filed with the board.

(2) The share of earned interest allocated to the horsemen's organization is used exclusively for the benefit of horsemen, including, among other purposes, purses.

(f) Notwithstanding subdivision (a) or (b), or any other provision of law, the horsemen's organization that represents the horsemen participating in a racing meeting and a licensed racing association may enter into an agreement that provides for the supplementing of purses due to the impact, if any, of activities regulated pursuant to the provisions of Chapter 5 (commencing with Section 19800) that are conducted on the association's property during a race meeting, if both of the following conditions are satisfied:

(1) The agreement is approved by the board.

(2) Any sum agreed to pursuant to this subdivision is used exclusively to supplement purses.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to preserve the fiscal health of thoroughbred racing in California and the continued generation of substantial General Fund revenues derived therefrom, and jobs associated therewith, at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 718

An act to add Sections 74644.1, 74644.2, and 74644.5 to the Government Code, and to amend Section 830.6 of the Penal Code, relating to marshals.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 74644.1 is added to the Government Code, to read:

74644.1. (a) There are, as of the effective date of the act that added this section, three elected marshal positions in Santa Barbara County. This section, and Sections 74644.2 and 74644.5, shall be operative on the date that both the office of the marshal serving the Santa Barbara Municipal Court and the office of the marshal serving the Lompoc Municipal Court become vacant. The marshal serving the Santa Maria Municipal Court at that time shall be deemed to have been selected by the judges of the Santa Barbara County courts

as the first countywide marshal as set forth in this section and Section 74644.2.

(b) There shall be one marshal, designated as the Marshal of Santa Barbara County, for the municipal and justice courts established in Santa Barbara County. The marshal shall be deemed the head of the department denominated as the Santa Barbara County Marshal's Office. That department shall be responsible for all court services for the municipal and justice courts, including bailiff duties in the courts, all service of process and other civil papers, and service of all criminal warrants issued by the municipal and justice courts of Santa Barbara County. The jurisdiction of the marshal's office over criminal warrants shall be concurrent to the jurisdiction existing in the Santa Barbara County Sheriff's Department over these warrants.

The marshal shall serve at the pleasure of a combined majority of the Santa Barbara Municipal Court judges, the Santa Maria Municipal Court judges, the Lompoc Municipal Court judge, and the Solvang Justice Court judge, hereafter referred to as the judges of the Santa Barbara County courts. The marshal shall possess the rights, duties, and powers imposed upon marshals generally.

The salary range of the marshal shall be at level 560. The marshal shall receive the elected official management benefits for the balance of the term to which he or she was previously elected, after which the marshal shall receive management benefits set at the appropriate level for appointed department heads. Any salary adjustment for this position within that range shall be made by the Marshal's Oversight Committee.

(c) The marshal positions existing in the Santa Barbara, Santa Maria, and Lompoc municipal courts, and the constable position in the Solvang Justice Court, are abolished. In no event shall the marshal of the Santa Maria Municipal Court be employed at a lesser pay range or with fewer benefits than that to which he or she was entitled on the operative date of this section, for the term to which he or she was elected.

(d) Whenever a vacancy occurs in the position of Marshal of Santa Barbara County, the judges of the Santa Barbara County municipal and justice courts, by a majority vote of their aggregate number, shall select and appoint the marshal under any organization, rules, and procedures they adopt or ratify. Discharge of the marshal shall be by majority vote of the judges of the municipal and justice courts of Santa Barbara County. The judges of the Santa Barbara County municipal and justice courts may, by two-thirds vote, delegate any function under this section to the Marshal's Oversight Committee.

(e) The judges of the Santa Barbara County municipal and justice courts shall create a Marshal's Oversight Committee consisting of three judges. The three judges shall be selected to sit on the committee on an annual basis. The committee shall consist of one judge from the South County selected by the Santa Barbara Municipal Court judges, and one judge from the North County selected by the Santa Maria Municipal Court judges, the Lompoc

Municipal Court judge, and the Solvang Justice Court judge. The third judge shall be appointed by the two selected judges and shall rotate between the North County and the South County courts. The Marshal's Oversight Committee may, by majority vote, make policies and adopt procedures pertaining to the operations and personnel administration of the marshal's department.

(f) There shall be two assistant marshals, one primarily assigned to the North County courts and one primarily assigned to the South County courts. Each assistant marshal shall be appointed by and serve at the pleasure of the marshal. This appointment shall require the concurrence of a majority of the members of the Marshal's Oversight Committee. Discharge of an assistant marshal shall be at the direction of the marshal and shall require the concurrence of a majority of the members of the Marshal's Oversight Committee.

(g) The salary range of an assistant marshal shall be at level 530. The salary of the assistant marshal may be adjusted annually, within its range, by the marshal with concurrence of the Marshal's Oversight Committee.

(h) A branch office of the Marshal of Santa Barbara County shall be maintained in each municipal and justice court facility.

SEC. 2. Section 74644.2 is added to the Government Code, to read:

74644.2. (a) All personnel of the Santa Barbara Marshal's Office, the Santa Maria Marshal's Office, and the Lompoc Marshal's Office on the effective date of this section shall automatically become members of the consolidated Santa Barbara County Marshal's Office at their existing or equivalent classifications, salaries, and benefits.

(b) Permanent employees described in subdivision (a) shall be deemed qualified, and no other qualifications shall be required for employment or retention.

(c) No employee of any marshal's office affected by this section shall lose peace officer status, or be demoted or otherwise adversely affected by the consolidation of court services accomplished by this section.

(d) The assignment of persons holding the position of deputy marshal to individual courtrooms shall be made by the marshal with the concurrence of the individual judge in whose courtroom the assignment is to be made and shall be consistent with local rules and procedures. Each deputy or officer shall serve in that assignment at the pleasure and under the direction of that judge.

(e) A salary comparison study shall be conducted by the Santa Barbara County Personnel Department, to be completed by April 15, 1994, to identify the appropriate salary level of the marshal and the assistant marshals under the consolidation required by Section 74644.1. These salaries shall be adjusted in accordance with the findings of the salary study and with the concurrence of the Marshal's Oversight Committee.

SEC. 3. Section 74644.5 is added to the Government Code, to read:

74644.5. On the operative date of this section, as provided in subdivision (a) of Section 74644.1, the positions prescribed in Sections 74642, 74643, and 74644 for the marshal's offices of the Santa Barbara Municipal Court, the Santa Maria Municipal Court, and the Lompoc Municipal Court shall be abolished, and within the municipal and justice court judicial districts, there shall be the following officers, attachés, and employees:

Number	Position	Salary Range
Marshal of Santa Barbara County		
1	Marshal	560
2	Assistant Marshal	530
North County		
1	Account Clerk II	364
1	Account Clerk III	391
1	Administrative Services Clerk	410
1	Assistant Marshal (SM)	527
1	Court Clerk I	359
7	Deputy Marshal	484
1	Deputy Marshal—S/D	494
1	Legal Services Specialist	406
1	Marshal's Sergeant	519
South County		
1	Clerk Principal	437
3	Court Clerk I	359
1	Court Clerk II	386
8	Deputy Marshal	484
2	Marshal's Sergeant	519

SEC. 4. Section 830.6 of the Penal Code is amended to read:

830.6. (a) (1) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff, a reserve deputy marshal, a reserve police officer of a regional park district or of a transit district, a reserve deputy of the Department of Fish and Game, a reserve special agent of the Department of Justice, a reserve officer of a community service district which is authorized under subdivision (h) of Section 61600 of the Government Code to maintain a police department or other police protection, or a reserve officer of a police protection district formed under Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code, and is assigned specific police functions by that authority, the person is a peace officer; provided, the person qualifies

as set forth in Section 832.6, and provided further, that the authority of the person as a peace officer shall extend only for the duration of the person's specific assignment. A transit district reserve officer may carry firearms only if authorized by, and under those terms and conditions as are specified by, his or her employing agency.

(2) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff, a reserve deputy marshal, or a reserve police officer of a regional park district or of a transit district, and is so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by that authority, the person is a peace officer; provided the person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6, and provided further, that the authority of the person shall include the full powers and duties of a peace officer as provided by Section 830.1, or in the case of a transit district reserve police officer, the powers and duties which are authorized in Section 830.33.

(b) Whenever any person is summoned to the aid of any uniformed peace officer, the summoned person shall be vested with the powers of a peace officer as are expressly delegated to him or her by the summoning officer or as are otherwise reasonably necessary to properly assist the officer.

SEC. 5. Section 830.6 of the Penal Code is amended to read:

830.6. (a) (1) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff, a reserve deputy marshal, a reserve police officer of a regional park district or of a transit district, a reserve harbor or port police officer of a county, city, or district as specified in Section 663.5 of the Harbors and Navigation Code, a reserve deputy of the Department of Fish and Game, a reserve special agent of the Department of Justice, a reserve officer of a community service district which is authorized under subdivision (h) of Section 61600 of the Government Code to maintain a police department or other police protection, or a reserve officer of a police protection district formed under Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code, and is assigned specific police functions by that authority, the person is a peace officer; provided, the person qualifies as set forth in Section 832.6, and provided further, that the authority of the person as a peace officer shall extend only for the duration of the person's specific assignment. A transit, harbor, or port district reserve officer may carry firearms only if authorized by, and under those terms and conditions as are specified by, his or her employing agency.

(2) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff, a reserve deputy marshal, a reserve

police officer of a regional park district or of a transit district, or a reserve harbor or port police officer of a county, city, or district as specified in Section 663.5 of the Harbors and Navigation Code, and is so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by that authority, the person is a peace officer; provided the person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6, and provided further, that the authority of the person shall include the full powers and duties of a peace officer as provided by Section 830.1, or in the case of a transit, harbor, or port district reserve police officer, or a city or county reserve peace officer not authorized by Section 830.1, the powers and duties which are authorized in Section 830.33.

(b) Whenever any person is summoned to the aid of any uniformed peace officer, the summoned person shall be vested with the powers of a peace officer as are expressly delegated to him or her by the summoning officer or as are otherwise reasonably necessary to properly assist the officer.

SEC. 6. Sections 1 to 3, inclusive, of this act shall be operative on the date that both the office of the marshal serving the Santa Barbara Municipal Court and the office of the marshal serving the Lompoc Municipal Court become vacant.

SEC. 7. Section 5 of this bill incorporates amendments to Section 830.6 of the Penal Code proposed by both this bill and AB 529. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 830.6 of the Penal Code, and (3) this bill is enacted after AB 529, in which case Section 4 of this bill shall not become operative.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 719

An act to amend Section 65352 of the Government Code, relating to planning.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 65352 of the Government Code is amended to read:

65352. (a) Prior to action by a legislative body to adopt or substantially amend a general plan, the planning agency shall refer the proposed action to all of the following entities:

(1) Any city or county, within or abutting the area covered by the proposal, and any special district which may be significantly affected by the proposed action, as determined by the planning agency.

(2) Any elementary, high school, or unified school district within the area covered by the proposed action.

(3) The local agency formation commission.

(4) Any areawide planning agency whose operations may be significantly affected by the proposed action, as determined by the planning agency.

(5) Any federal agency if its operations or lands within its jurisdiction may be significantly affected by the proposed action, as determined by the planning agency.

(6) Any public water system, as defined in Section 4010.1 of the Health and Safety Code, with 3,000 or more service connections, that serves water to customers within the area covered by the proposal. The public water system shall have at least 45 days to comment on the proposed plan, in accordance with subdivision (b), and to provide the planning agency with the information set forth in Section 65958.1.

(7) The Bay Area Air Quality Management District for a proposed action within the boundaries of the district.

(b) Each entity receiving a proposed general plan or amendment of a general plan pursuant to this section shall have 45 days from the date the referring agency mails it or delivers it in which to comment unless a longer period is specified by the planning agency.

(c) (1) This section is directory, not mandatory, and the failure to refer a proposed action to the other entities specified in this section does not affect the validity of the action, if adopted.

(2) To the extent that the requirements of this section conflict with the requirements of Chapter 4.4 (commencing with Section 65919), the requirements of Chapter 4.4 shall prevail.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service

charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 720

An act to amend Section 10631 of the Water Code, relating to water.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 10631 of the Water Code is amended to read:

10631. A plan shall do all of the following:

(a) Include an estimate of past, current, and projected potable and reclaimed water use and, to the extent records are available, segregate those uses between residential, industrial, commercial, and governmental uses.

(b) (1) Identify conservation and reclamation measures currently adopted and being practiced.

(2) Urban water suppliers that are members of the California Urban Water Conservation Council and submit annual reports to that council in accordance with the "Memorandum of Understanding Regarding Urban Water Conservation in California," dated September 1991, may submit the annual reports for the purposes of identifying conservation measures as required by paragraph (1).

(c) Describe alternative conservation measures, including, but not limited to, consumer education, metering, water saving fixtures and appliances, pool covers, lawn and garden irrigation techniques, and low water use landscaping, that would improve the efficiency of water use with an evaluation of their costs and their environmental and other significant impacts.

(d) Provide a schedule of implementation for proposed actions as indicated by the plan.

(e) Provide an urban water shortage contingency plan that includes all of the following elements that are within the authority of the urban water supplier:

(1) Past, current, and projected water use and, to the extent records are available, a breakdown of those uses on the basis of single-family residential, multifamily residential, commercial, industrial, governmental, and agricultural use.

(2) An estimate of the minimum water supply available at the end

of 12, 24, and 36 months, assuming the worst case water supply shortages.

(3) Stages of action to be undertaken by the urban water supplier in response to water supply shortages, including up to a 50 percent reduction in water supply, and an outline of specific water supply conditions that are applicable to each stage.

(4) Mandatory provisions to reduce water use that include prohibitions against specific wasteful practices, such as gutter flooding.

(5) Consumption limits in the most restrictive stages. Each urban water supplier may use any type of consumption limit in its water shortage contingency plan that would reduce water use and is appropriate for its area. Examples of consumption limits that may be used include, but are not limited to, percentage reductions in water allotments, per capita allocations, an increasing block rate schedule for high usage of water with incentives for conservation, or restrictions on specific uses.

(6) Penalties or charges for excessive use.

(7) An analysis of the impacts of the plan on the revenues and expenditures of the urban water supplier, and proposed measures to overcome those impacts, such as the development of reserves and rate adjustments.

(8) A draft water shortage contingency resolution or ordinance to carry out the urban water shortage contingency plan.

(9) A mechanism for determining actual reductions in water use pursuant to the urban water shortage contingency plan.

(f) Describe the frequency and magnitude of supply deficiencies, based on available historic data and future projected conditions comparing water supply and demand, including a description of deficiencies in time of drought and emergency and the ability to meet deficiencies.

(g) To the extent feasible, describe the method which will be used to evaluate the effectiveness of each conservation and reclamation measure implemented under the plan.

(h) Describe the steps which would be necessary to implement any proposed actions in the plan.

(i) Describe findings, actions, and planning relating to all of the following:

(1) The use of internal and external water audits for single-family residential, multifamily residential, institutional, commercial, industrial, and governmental customers, and the use of incentive programs to encourage customer audits and program participation.

(2) The use of distribution system water audits.

(3) Leak detection and repair.

(4) The use of large landscape water audits and incentives for conversion to water reuse.

(5) Methods to increase the use of reclaimed water in areas in which the use of potable water is not required.

(j) Describe financial incentives used to encourage the use of

reclaimed water and the results of these actions in terms of acre-feet per year used.

(k) Describe water reclamation measures for agricultural irrigation, landscape irrigation, wildlife habitat enhancement, wetlands, industrial reuse, groundwater recharge, and other appropriate uses.

(*l*) Identify actions and incentives to facilitate the development of dual water systems for the use of reclaimed water in new construction, for flushing toilets and urinals, landscaping, golf courses, cemeteries, irrigation, and other appropriate purposes.

(m) Describe actions and planning to eliminate the use of once-through cooling systems, nonrecirculating water systems, and nonrecycling decorative water fountains, and to encourage the recirculation of water if proper public health and safety standards are maintained.

(n) Describe actions and plans to enforce conservation and reclamation measures.

(o) To the extent feasible, describe the amount of water saved through water conservation and reclamation measures employed by user groups.

(p) Describe actions and planning to ensure the involvement of community members within the service area with regard to water management planning.

CHAPTER 721

An act to amend Sections 25133.2, 25133.4, 25133.5, and 25133.6 of the Health and Safety Code, relating to hazardous waste, and making an appropriation therefor.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 25133.2 of the Health and Safety Code is amended to read:

25133.2. (a) The department shall establish and administer, until December 1, 1996, a small business assistance program. The program shall make a grant to each of two counties to each develop a small business assistance pilot project that will incorporate the hazardous waste management priorities specified in Section 25179.4 and that will accomplish all of the following:

(1) Reduce the generation of hazardous waste by SQGs. When it is not feasible to reduce or recycle hazardous waste subject to the pilot project, the hazardous waste shall be managed in compliance with the requirements of this chapter to minimize the present and future threat to health and safety or the environment.

(2) Develop an environmental education program, in cooperation with the department, to provide practical information on all applicable state and federal hazardous waste regulations. The program shall include information on waste reduction, recycling, and SQGs, and responsibilities for safely managing hazardous waste as well as the impacts hazardous waste generated could have on the environment.

(3) Design and develop a collection system to assist small businesses to legally dispose of hazardous waste which cannot otherwise be reduced.

(4) Prevent the illegal disposal of hazardous waste generated by small businesses in solid waste disposal facilities and into the environment.

(5) Identify and list categories of hazardous waste generated by specific industries in the county, which qualify as SQGs and which are potential candidates for the collection system for generated hazardous waste.

(b) The department shall give preference in awarding grants to counties that indicate commitment to continue the projects after state funding has expired. The grant amount for the first pilot project shall be four hundred thousand dollars ($400,000) and the grant amount for the second pilot project shall be up to two hundred fifty thousand dollars ($250,000). These funds shall be used for the purposes set forth in subdivision (a). The cost of transportation, storage, and treatment shall be paid by the participating SQGs but the county may use up to 40 percent of any grant funds to subsidize the cost of collection of hazardous waste. The department may expend up to 10 percent of each grant to administer the grant contract.

SEC. 2. Section 25133.4 of the Health and Safety Code is amended to read:

25133.4. Counties shall submit grant applications for the first pilot project to the department on or before May 1, 1991, and for the second pilot project, on or before May 1, 1994. The department shall evaluate each grant application for its potential to satisfy the requirements specified in Section 25133.2 and shall award the grant based on the evaluation. The department shall notify the applicants of the approval or denial of the grant applications for the first pilot project by October 1, 1991, and for the second pilot project, by October 1, 1994.

SEC. 3. Section 25133.5 of the Health and Safety Code is amended to read:

25133.5. (a) Each grant recipient shall submit to the department a report describing the implementation of the small business assistance pilot project and the extent to which the program was successful in addressing the problem of the illegal disposal of hazardous waste and related matters set forth in subdivision (a) of Section 25133.2. The report for the first pilot project shall be submitted to the department on or before October 1, 1993, and the

report for the second pilot project shall be submitted to the department on or before October 1, 1996. The reports shall include all of the following information:

(1) The procedures developed and used by the county in the selection and targeting of small quantity generators.

(2) The materials developed and used by the county in the environmental education program for small quantity generators.

(3) An account of the total number of small quantity generators who could participate in the pilot project.

(4) An account of the total hazardous waste generated by type and waste stream for each targeted small quantity generator that participates in the project.

(5) A determination whether the project was successful in obtaining the participation of 20 percent or more of the identified SQGs in the pilot project and, of those participating, whether at least 10 percent of their hazardous waste is either reduced or recycled.

(6) An identification of waste minimization technologies applied in the project, including an indication of their effectiveness.

(7) A description of measures taken by the county to continue the program.

(b) On or before December 1, 1996, the department shall submit to the Legislature the reports received pursuant to subdivision (a), together with recommendations as to the applicability of the program to counties throughout the state.

SEC. 4. Section 25133.6 of the Health and Safety Code is amended to read:

25133.6. This article shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute which is enacted before January 1, 1997, deletes or extends that date.

SEC. 5. (a) The sum of up to two hundred fifty thousand dollars ($250,000) is hereby appropriated from the Hazardous Waste Control Account in the General Fund to the Department of Toxic Substances Control for the purpose of funding a second small business assistance pilot project pursuant to Article 3.3 (commencing with Section 25133) of Chapter 6.5 of Division 20 of the Health and Safety Code, provided that this sum shall be available for expenditure only to the extent that sufficient funds remain in the Hazardous Waste Control Account after all appropriations have been made from the Hazardous Waste Control Account in the 1993–94 Budget Act.

(b) No grant shall be made by the Department of Toxic Substances Control for a second small business assistance pilot project from funds appropriated pursuant to subdivision (a), unless an amount equal to one dollar ($1) for every two dollars ($2) of the grant is made available to the applicant from other public or private sources, including federal agencies, for the pilot project.

CHAPTER 722

An act to amend Sections 369g and 369i of, and to add Sections 369a and 369b to, the Penal Code, and to add Section 1656.3 to the Vehicle Code, relating to rail transit traffic safety.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the "Rail Traffic Safety Act."

SEC. 2. Section 369a is added to the Penal Code, to read:

369a. (a) The Legislature hereby finds and declares the following:

(1) Rail transit traffic safety programs are necessary to educate the public about the potential for harm and injury arising from an individual's disregard for, and violation of, rail-related traffic safety laws, and to increase the consequences for those persons violating rail-related traffic safety laws.

(2) Currently, there does not exist a unified statewide system to deal with the ever increasing problem of rail-related traffic safety violators, and to provide a method of educating the public.

(b) In each county with a population greater than 500,000 in which a transportation commission or authority has been established and it owns or operates rail transit facilities, the commission or authority may provide and disseminate appropriate educational materials to traffic schools to aid in reducing the number of rail-related traffic accidents, including, but not limited to, a film developed or caused to be developed by the transportation commission or authority on rail transit safety.

SEC. 3. Section 369b is added to the Penal Code, to read:

369b. (a) This section shall only apply to counties with a population greater than 500,000.

(b) The court may order any person convicted of a rail transit related traffic violation, as listed in subdivision (c), to attend a traffic school which offers, as a part of its curriculum, a film developed or caused to be developed by a transportation commission or authority on rail transit safety.

(c) For a first offense, a court may, at its discretion, order any person cited for any of the following violations to attend a traffic school offering a rail transit safety film prepared by a county transportation commission or authority, pay an additional fine of up to one hundred dollars ($100), or both:

(1) Section 369g.

(2) Section 369i.

(3) Subdivision (c) of Section 21752 or Section 22451 of the Vehicle Code.

(d) For a second or subsequent violation as provided in subdivision (c), a court shall order a person to pay an additional fine of up to two hundred dollars ($200) and to attend a traffic school offering a rail safety film prepared by a county transportation commission or authority.

(e) All fines collected according to this section shall be distributed pursuant to Section 1463 of the Penal Code.

SEC. 4. Section 369g of the Penal Code is amended to read:

369g. (a) Any person who rides, drives, or propels any vehicle upon and along the track of any railroad through or over its private right-of-way, without the authorization of its superintendent or other officer in charge thereof, is guilty of a misdemeanor.

(b) Any person who rides, drives, or propels any vehicle upon and along the track of any railline owned or operated by a county transportation commission or transportation authority without the authorization of the commission or authority is guilty of a misdemeanor.

SEC. 5. Section 369i of the Penal Code is amended to read:

369i. (a) Any person who enters or remains upon the property of any railroad without the permission of the owner of the land, the owner's agent, or the person in lawful possession and whose entry, presence, or conduct upon the property interferes with, interrupts, or hinders, or which, if allowed to continue, would interfere with, interrupt, or hinder the safe and efficient operation of any locomotive, railway car, or train is guilty of a misdemeanor.

As used in this subdivision, "property of any railroad" means any land owned, leased, or possessed by a railroad upon which is placed a railroad track and the land immediately adjacent thereto, to the distance of 20 feet on either side of the track, which is owned, leased, or possessed by a railroad.

(b) Any person who enters or remains upon any rail transit related property owned or operated by a county transportation commission or transportation authority without permission or whose entry, presence, or conduct upon the property interferes with, interrupts, or hinders the safe and efficient operation of the railline or rail-related facility is guilty of a misdemeanor.

As used in this subdivision, "rail transit related property" means any land or facilities owned, leased, or possessed by a county transportation commission or transportation authority.

(c) This section does not prohibit picketing in the immediately adjacent area of the property of any railroad or rail transit related property or any lawful activity by which the public is informed of the existence of an alleged labor dispute.

SEC. 6. Section 1656.3 is added to the Vehicle Code, to read:

1656.3. The department shall include within the California Driver's Handbook, as specified in subdivision (b) of Section 1656, language regarding rail transit safety.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the

only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 723

An act to amend Section 25540 of, and to add Section 25403 to, the Corporations Code, relating to securities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 25403 is added to the Corporations Code, to read:

25403. It is unlawful for any person to offer or sell in this state any security constituting a fractional interest in a lease, installment sale, or other obligation of a city, county, city and county, school district, special district, or other local agency of this state without obtaining the prior written consent of that city, county, city and county, school district, special district, or other local agency to that offer or sale. However, this section shall not apply to (a) offers or sales of shares or interests in any registered unit investment trust or management company, each as defined in Section 4 of the federal Investment Company Act of 1940, as amended (15 U.S.C. Sec. 80a-4), (b) offers or sales of any security described in this section subsequent to an offer or sale of that security in compliance with this section, or (c) offers or sales of participation interests between financial institutions. The obtaining of prior written consent does not obviate the necessity of qualification of the offer or sale of any security constituting a fractional interest, unless the security or transaction is exempt from qualification under this law.

SEC. 2. Section 25540 of the Corporations Code is amended to read:

25540. (a) Except as provided for in subdivision (b), any person who willfully violates any provision of this law, or who willfully violates any rule or order under this law, shall upon conviction be fined not more than two hundred fifty thousand dollars ($250,000) or imprisoned in the state prison, or in a county jail for not more than one year, or be punished by both such fine and imprisonment; but no person may be imprisoned for the violation of any rule or order

if he or she proves that he or she had no knowledge of the rule or order.

(b) Any person who willfully violates Section 25400, 25401, 25402, or 25403 shall upon conviction be fined not more than two hundred fifty thousand dollars ($250,000), or imprisoned in the state prison for two, three, or five years, or be punished by both such fine and imprisonment.

SEC. 2.5. Section 25540 of the Corporations Code is amended to read:

25540. (a) Except as provided for in subdivision (b), any person who willfully violates any provision of this law, or who willfully violates any rule or order under this law, shall upon conviction be fined not more than one million dollars ($1,000,000), or imprisoned in the state prison, or in a county jail for not more than one year, or be punished by both such fine and imprisonment; but no person may be imprisoned for the violation of any rule or order if he or she proves that he or she had no knowledge of the rule or order.

(b) Any person who willfully violates Section 25400, 25401, 25402, or 25403 shall upon conviction be fined not more than ten million dollars ($10,000,000), or imprisoned in the state prison for two, three, or five years, or be punished by both such fine and imprisonment.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to prevent unauthorized offerings of local agency securities and the dissemination of fraudulent or misleading disclosure documents, it is necessary that this act take effect immediately.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 25540 of the Corporations Code proposed by both this bill and SB 955. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 25540 of the Corporations Code, and (3) this bill is enacted after SB 955, in which case Section 25540 of the Corporations Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of SB 955, at which time Section 2.5 of this bill shall become operative.

CHAPTER 724

An act to amend Sections 2924f and 2924h of, and to add Section 1058.5 to, the Civil Code, relating to property.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1058.5 is added to the Civil Code, to read:

1058.5. (a) A notice of nonacceptance of a recorded deed executed by a holder of a security interest, which notice identifies the security interest, contains a legal description of the property, properly identifies the parties to the deed, the date of recordation of the deed, the county in which the project is located, and the county assessor's parcel number of the real property referenced in the deed, may be recorded in the office of the county recorder where the real property is located.

(b) Where a trustee's deed is invalidated by a pending bankruptcy or otherwise, recordation of a notice of rescission of the trustee's deed, which notice properly identifies the deed of trust, the identification numbers used by the recorder or the books and pages at which the trustee's deed and deed of trust are recorded, the names of all trustors and beneficiaries, the location of the property subject to the deed of trust, and the reason for rescission, shall restore the condition of record title to the real property described in the trustee's deed and the existence and priority of all lienholders to the status quo prior to the recordation of the trustee's deed upon sale.

SEC. 2. Section 2924f of the Civil Code is amended to read:

2924f. (a) As used in this section and Sections 2924g and 2924h, "property" means real property or a leasehold estate therein.

(b) (1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which the property is to be sold, and publishing a copy once a week for the same period, in a newspaper of general circulation published in the city in which the property or some part thereof is situated, if any part thereof is situated in a city, if not, then in a newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial

district, as the case may be, in a newspaper of general circulation published in the county in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district or county, as the case may be, in a newspaper of general circulation published in the county in this state that (A) is contiguous to the county in which the property or some part thereof is situated and (B) has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. A copy of the notice of sale shall also be posted in a conspicuous place on the property to be sold at least 20 days before the date of sale, where possible and where not restricted for any reason. If the property is a single-family residence the posting shall be on a door of the residence, but, if not possible or restricted, then the notice shall be posted in a conspicuous place on the property; however, if access is denied because a common entrance to the property is restricted by a guard gate or similar impediment, the property may be posted at that guard gate or similar impediment to any development community. Additionally, the notice of sale shall be recorded with the county recorder of the county in which the property or some part thereof is situated at least 14 days prior to the date of sale. The notice of sale shall contain the name, street address, and telephone number of the trustee or other person conducting the sale, and the name of the original trustor, and also shall contain the statement required by paragraph (3) of subdivision (c). In addition to any other description of the property, the notice shall describe the property by giving its street address, if any, or other common designation, if any, and a county assessor's parcel number; but if the property has no street address or other common designation, the notice shall contain a legal description of the property, the name and address of the beneficiary at whose request the sale is to be conducted, and a statement that directions may be obtained pursuant to a written request submitted to the beneficiary within 10 days from the first publication of the notice. Directions shall be deemed reasonably sufficient to locate the property if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If a legal description or a county assessor's parcel number and either a street address or another common designation of the property is given, the validity of the notice and the validity of the sale shall not be affected by the fact that the street address, other common designation, name and address of the beneficiary, or the directions obtained therefrom are erroneous or that the street address, other common designation, name and address of the beneficiary, or directions obtained therefrom are omitted. The term "newspaper of general circulation," as used in this section, has the same meaning as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code.

The notice of sale shall contain a statement of the total amount of the unpaid balance of the obligation secured by the property to be sold and reasonably estimated costs, expenses, advances at the time of the initial publication of the notice of sale, and, if republished pursuant to a cancellation of a cash equivalent pursuant to subdivision (d) of Section 2924h, a reference of that fact; provided, that the trustee shall incur no liability for any good faith error in stating the proper amount. An inaccurate statement of this amount shall not affect the validity of any sale to a bona fide purchaser for value, nor shall the failure to post the notice of sale on a door as provided by this subdivision affect the validity of any sale to a bona fide purchaser for value.

(2) If the sale of the property is to be a unified sale as provided in subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, the notice of sale shall also contain a description of the personal property or fixtures to be sold. In the case where it is contemplated that all of the personal property or fixtures are to be sold, the description in the notice of the personal property or fixtures shall be sufficient if it is the same as the description of the personal property or fixtures contained in the agreement creating the security interest in or encumbrance on the personal property or fixtures or the filed financing statement relating to the personal property or fixtures. In all other cases, the description in the notice shall be sufficient if it would be a sufficient description of the personal property or fixtures under Section 9110 of the Commercial Code. Inclusion of a reference to or a description of personal property or fixtures in a notice of sale hereunder shall not constitute an election by the secured party to conduct a unified sale pursuant to subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, shall not obligate the secured party to conduct a unified sale pursuant to subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, and in no way shall render defective or noncomplying either that notice or a sale pursuant to that notice by reason of the fact that the sale includes none or less than all of the personal property or fixtures referred to or described in the notice. This paragraph shall not otherwise affect the obligations or duties of a secured party under the Commercial Code.

(c) (1) This subdivision applies only to deeds of trust or mortgages which contain a power of sale and which are secured by real property containing a single-family, owner-occupied residence, where the obligation secured by the deed of trust or mortgage is contained in a contract for goods or services subject to the provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

(2) Except as otherwise expressly set forth in this subdivision, all other provisions of law relating to the exercise of a power of sale shall govern the exercise of a power of sale contained in a deed of trust or mortgage described in paragraph (1).

(3) If any default of the obligation secured by a deed of trust or mortgage described in paragraph (1) has not been cured within 30 days after the recordation of the notice of default, the trustee or mortgagee shall mail to the trustor or mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A

_____,

(Deed of trust or mortgage)

DATED _____. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

(4) All sales of real property pursuant to a power of sale contained in any deed of trust or mortgage described in paragraph (1) shall be held in the county where the residence is located and shall be made to the person making the highest offer. The trustee may receive offers during the 10-day period immediately prior to the date of sale and if any offer is accepted in writing by both the trustor or mortgagor and the beneficiary or mortgagee prior to the time set for sale, the sale shall be postponed to a date certain and prior to which the property may be conveyed by the trustor to the person making the offer according to its terms. The offer is revocable until accepted. The performance of the offer, following acceptance, according to its terms, by a conveyance of the property to the offeror, shall operate to terminate any further proceeding under the notice of sale and it shall be deemed revoked.

(5) In addition to the trustee fee pursuant to Section 2924c, the trustee or mortgagee pursuant to a deed of trust or mortgage subject to this subdivision shall be entitled to charge an additional fee of fifty dollars ($50).

(6) This subdivision applies only to property on which notices of default were filed on or after the effective date of this subdivision.

SEC. 2.5. Section 2924f of the Civil Code is amended to read:

2924f. (a) As used in this section and Sections 2924g and 2924h, "property" means real property or a leasehold estate therein.

(b) (1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which the property is to be sold, and publishing

a copy once a week for the same period, in a newspaper of general circulation published in the city in which the property or some part thereof is situated, if any part thereof is situated in a city, if not, then in a newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district, as the case may be, in a newspaper of general circulation published in the county in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district or county, as the case may be, in a newspaper of general circulation published in the county in this state that (A) is contiguous to the county in which the property or some part thereof is situated and (B) has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. A copy of the notice of sale shall also be posted in a conspicuous place on the property to be sold at least 20 days before the date of sale, where possible and where not restricted for any reason. If the property is a single-family residence the posting shall be on a door of the residence, but, if not possible or restricted, then the notice shall be posted in a conspicuous place on the property; however, if access is denied because a common entrance to the property is restricted by a guard gate or similar impediment, the property may be posted at that guard gate or similar impediment to any development community. Additionally, the notice of sale shall conform to the minimum requirements of Section 6043 of the Government Code and be recorded with the county recorder of the county in which the property or some part thereof is situated at least 14 days prior to the date of sale. The notice of sale shall contain the name, street address, and telephone number of the trustee or other person conducting the sale, and the name of the original trustor, and also shall contain the statement required by paragraph (3) of subdivision (c). In addition to any other description of the property, the notice shall describe the property by giving its street address, if any, or other common designation, if any, and a county assessor's parcel number ; but if the property has no street address or other common designation, the notice shall contain a legal description of the property, the name and address of the beneficiary at whose request the sale is to be conducted, and a statement that directions may be obtained pursuant to a written request submitted to the beneficiary within 10 days from the first publication of the notice. Directions shall be deemed reasonably sufficient to locate the property if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If a legal description or a county assessor's parcel number and either a street address or another common designation of the property is given, the validity of the notice and the validity of the sale shall not be affected by the fact that the street address, other

common designation, name and address of the beneficiary, or the directions obtained therefrom are erroneous or that the street address, other common designation, name and address of the beneficiary, or directions obtained therefrom are omitted. The term "newspaper of general circulation," as used in this section, has the same meaning as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code.

The notice of sale shall contain a statement of the total amount of the unpaid balance of the obligation secured by the property to be sold and reasonably estimated costs, expenses, advances at the time of the initial publication of the notice of sale, and, if republished pursuant to a cancellation of a cash equivalent pursuant to subdivision (d) of Section 2924h, a reference of that fact; provided, that the trustee shall incur no liability for any good faith error in stating the proper amount. An inaccurate statement of this amount shall not affect the validity of any sale to a bona fide purchaser for value, nor shall the failure to post the notice of sale on a door as provided by this subdivision affect the validity of any sale to a bona fide purchaser for value.

(2) If the sale of the property is to be a unified sale as provided in subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, the notice of sale shall also contain a description of the personal property or fixtures to be sold. In the case where it is contemplated that all of the personal property or fixtures are to be sold, the description in the notice of the personal property or fixtures shall be sufficient if it is the same as the description of the personal property or fixtures contained in the agreement creating the security interest in or encumbrance on the personal property or fixtures or the filed financing statement relating to the personal property or fixtures. In all other cases, the description in the notice shall be sufficient if it would be a sufficient description of the personal property or fixtures under Section 9110 of the Commercial Code. Inclusion of a reference to or a description of personal property or fixtures in a notice of sale hereunder shall not constitute an election by the secured party to conduct a unified sale pursuant to subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, shall not obligate the secured party to conduct a unified sale pursuant to subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, and in no way shall render defective or noncomplying either that notice or a sale pursuant to that notice by reason of the fact that the sale includes none or less than all of the personal property or fixtures referred to or described in the notice. This paragraph shall not otherwise affect the obligations or duties of a secured party under the Commercial Code.

(c) (1) This subdivision applies only to deeds of trust or mortgages which contain a power of sale and which are secured by real property containing a single-family, owner-occupied residence, where the obligation secured by the deed of trust or mortgage is

contained in a contract for goods or services subject to the provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

(2) Except as otherwise expressly set forth in this subdivision, all other provisions of law relating to the exercise of a power of sale shall govern the exercise of a power of sale contained in a deed of trust or mortgage described in paragraph (1).

(3) If any default of the obligation secured by a deed of trust or mortgage described in paragraph (1) has not been cured within 30 days after the recordation of the notice of default, the trustee or mortgagee shall mail to the trustor or mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A

_____,

(Deed of trust or mortgage)

DATED _____. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

(4) All sales of real property pursuant to a power of sale contained in any deed of trust or mortgage described in paragraph (1) shall be held in the county where the residence is located and shall be made to the person making the highest offer. The trustee may receive offers during the 10-day period immediately prior to the date of sale and if any offer is accepted in writing by both the trustor or mortgagor and the beneficiary or mortgagee prior to the time set for sale, the sale shall be postponed to a date certain and prior to which the property may be conveyed by the trustor to the person making the offer according to its terms. The offer is revocable until accepted. The performance of the offer, following acceptance, according to its terms, by a conveyance of the property to the offeror, shall operate to terminate any further proceeding under the notice of sale and it shall be deemed revoked.

(5) In addition to the trustee fee pursuant to Section 2924c, the trustee or mortgagee pursuant to a deed of trust or mortgage subject to this subdivision shall be entitled to charge an additional fee of fifty dollars ($50).

(6) This subdivision applies only to property on which notices of default were filed on or after the effective date of this subdivision.

SEC. 3. Section 2924h of the Civil Code is amended to read:

2924h. (a) Each and every bid made by a bidder at a trustee's sale under a power of sale contained in a deed of trust or mortgage shall be deemed to be an irrevocable offer by that bidder to purchase the property being sold by the trustee under the power of sale for the amount of the bid. Any second or subsequent bid by the same bidder or any other bidder for a higher amount shall be a cancellation

of the prior bid.

(b) At the trustee's sale the trustee shall have the right (1) to require every bidder to show evidence of the bidder's ability to deposit with the trustee the full amount of his or her final bid in cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee prior to, and as a condition to, the recognizing of the bid, and to conditionally accept and hold these amounts for the duration of the sale, and (2) to require the last and highest bidder to deposit, if not deposited previously, the full amount of the bidder's final bid in cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee, immediately prior to the completion of the sale, the completion of the sale being so announced by the fall of the hammer or in other customary manner. The present beneficiary of the deed of trust under foreclosure shall have the right to offset his or her bid (s) only to the extent of the total amount due the beneficiary including the trustee's fees and expenses.

(c) In the event the trustee accepts a check drawn by a credit union or a savings and loan association pursuant to this subdivision or a cash equivalent designated in the notice of sale, the trustee may withhold the issuance of the trustee's deed to the successful bidder submitting the check drawn by a state or federal credit union or savings and loan association or the cash equivalent until funds become available to the payee or endorsee as a matter of right.

For the purposes of this subdivision, the trustee's sale shall be deemed final upon the acceptance of the last and highest bid, and shall be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 15 calendar days of the sale. However, the sale is subject to an automatic rescission for a failure of consideration in the event the funds are not "available for withdrawal" as defined in Section 12413.1 of the Insurance Code. The trustee shall send a notice of rescission for a failure of consideration to the last and highest bidder submitting the check or alternative instrument, if the address of the last and highest bidder is known to the trustee.

If a sale results in an automatic right of rescission for failure of consideration pursuant to this subdivision, the interest of any lienholder shall be reinstated in the same priority as if the previous sale had not occurred.

(d) If the trustee has not required the last and highest bidder to deposit the cash, a cashier's check drawn on a state or national bank,

a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee in the manner set forth in paragraph (2) of subdivision (b), the trustee shall complete the sale. If the last and highest bidder then fails to deliver to the trustee, when demanded, the amount of his or her final bid in cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee, that bidder shall be liable to the trustee for all damages which the trustee may sustain by the refusal to deliver to the trustee the amount of the final bid, including any court costs and reasonable attorneys' fees.

If the last and highest bidder willfully fails to deliver to the trustee the amount of his or her final bid in cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee, or if the last and highest bidder cancels an instrument submitted to the trustee as a cash equivalent, that bidder shall be guilty of a misdemeanor punishable by a fine of not more than two thousand five hundred dollars ($2,500).

In the event the last and highest bidder cancels an instrument submitted to the trustee as a cash equivalent, the trustee shall provide a new notice of sale in the manner set forth in Section 2924f and shall be entitled to recover the costs of the new notice of sale as provided in Section 2924c.

(e) Any postponement or discontinuance of the sale proceedings shall be a cancellation of the last bid.

(f) In the event that this section conflicts with any other statute, then this section shall prevail.

(g) It shall be unlawful for any person, acting alone or in concert with others, (1) to offer to accept or accept from another, any consideration of any type not to bid, or (2) to fix or restrain bidding in any manner, at a sale of property conducted pursuant to a power of sale in a deed of trust or mortgage. However, it shall not be unlawful for any person, including a trustee, to state that a property subject to a recorded notice of default or subject to a sale conducted pursuant to this chapter is being sold in an "as-is" condition.

In addition to any other remedies, any person committing any act declared unlawful by this subdivision or any act which would operate as a fraud or deceit upon any beneficiary, trustor, or junior lienor shall, upon conviction, be fined not more than ten thousand dollars

($10,000) or imprisoned in the county jail for not more than one year, or be punished by both that fine and imprisonment.

SEC. 3.5. Section 2.5 of this bill incorporates amendments to Section 2924f of the Civil Code proposed by both this bill and AB 1219. It shall become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 2924f of the Civil Code, and (3) this bill is enacted after AB 1219, in which case Section 2 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 725

An act to amend Section 18037 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 18037 of the Revenue and Taxation Code is amended to read:

18037. (a) The provisions of Section 1033(g)(3)(A) of the Internal Revenue Code, relating to the election to treat outdoor advertising displays as real property, shall not be denied because the taxpayer has, on his or her federal return, elected to expense the asset.

(b) (1) The provisions of Section 1033(h) of the Internal Revenue Code, relating to special rules for principal residences damaged by presidentially declared disasters, as added by Section 13431 of the Revenue Reconciliation Act of 1993, shall apply.

(2) Section 13431(b) of the Revenue Reconciliation Act of 1993, relating to effective dates, shall apply.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 726

An act to amend Sections 1596.8725, 1596.895, 1596.98, 1597.091, 1597.542, 1597.56, and 1597.62 of, to amend and renumber Sections 1596.872, 1596.893, and 1597.55 of, to add Sections 1596.872a, 1596.893a, and 1597.55a to, the Health and Safety Code, to amend and renumber Section 6516.5 of the Government Code, to amend Section 18285 of, and to add Section 18285.5 to, the Welfare and Institutions Code, and to repeal Section 16 of Chapter 1316 of the Statutes of 1992, relating to child day care facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1596.872a is added to the Health and Safety Code, to read:

1596.872a. (a) The department shall establish a child care ombudsman program. Each regional office, as well as the central office of the department, shall have an ombudsman who has knowledge of state child care laws, regulations, and programs. The ombudsman's duties shall include, but not be limited to, all of the following:

(1) Providing information to the general public and parents on child care licensing standards and regulations.

(2) Serving as a liaison to local business, community, law enforcement, labor, and education groups, as well as child care providers and consumers, for the purpose of providing information about licensing standards and regulations.

(3) Disseminating information on the state's licensing role and activities, child care resource and referral agencies, and other child care programs.

(4) Acting as a liaison to child care resource and referral agencies to provide current information on licensing regulations, procedures, violations, revocations, and activities.

(5) Investigating and seeking to resolve complaints and concerns communicated on behalf of children served by a child day care facility. Complaints shall be handled in an objective manner to ascertain the pertinent facts. The ombudsman may refer any complaint to the appropriate state or local government agency.

(b) The ombudsman shall have access to child day care facilities and shall have the authority to speak with children and staff.

(c) The department shall report to the Legislature and the Governor, on December 31, 1985, and annually thereafter, the number of complaints resolved and referred and any related followup activities, and the number of facilities visited pursuant to subdivision (a).

(d) The department shall implement this section during periods that Section 1596.872b is not being implemented in accordance with Section 18285.5 of the Welfare and Institutions Code.

SEC. 2. Section 1596.872 of the Health and Safety Code, as amended by Section 2 of Chapter 1316 of the Statutes of 1992, is amended and renumbered to read:

1596.872b. (a) The department shall establish a child care advocate branch. This branch shall have one child care advocate for each licensing district office providing child care licensing services. A chief child care advocate shall be responsible for operations of the program and shall report to the deputy director of the Community Care Licensing Division.

Each child care advocate shall have knowledge of state child care laws, regulations, and programs. The child care advocate's duties shall include, but not be limited to, all of the following:

(1) Providing information to the general public and parents on child care licensing standards and regulations.

(2) Serving as a liaison to local business, community, law enforcement, labor, and education groups, as well as child care providers and consumers, for the purpose of providing information about licensing standards and regulations.

(3) Disseminating information on the state's licensing role and activities, child care resource and referral agencies, and other child care programs.

(4) Acting as a liaison to child care resource and referral agencies to provide current information on licensing regulations, procedures, violations, revocations, and activities.

(5) Evaluating and seeking to resolve complaints and concerns communicated on behalf of children served by a child day care facility. Complaints shall be handled in an objective manner to ascertain the pertinent facts. The child care advocate may refer any complaint to the appropriate state or local government agency.

(6) Seeking to mediate disputes between the department and child care licensees, where licensees allege misapplication of licensing regulations and have exercised any initial appeal rights as specified in Section 1596.842.

(b) The child care advocate shall have access to child day care facilities and shall have the authority to speak with children and staff.

(c) The department shall report to the Legislature and the Governor, on December 31, 1985, and annually thereafter, the number of complaints resolved and referred and any related followup activities, and the number of facilities visited pursuant to subdivision (a).

(d) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

SEC. 3. Section 1596.8725 of the Health and Safety Code is amended to read:

1596.8725. (a) The Secretary of Health and Welfare, or any other

agency the Governor deems appropriate, shall appoint a Monitor who shall be confirmed by the Senate. The Monitor shall serve as an independent agent to coordinate an annual study that includes all of the following:

(1) Collection and review of data on the types of complaints made against licensed child care providers, the length of time it takes the child care licensing staff to evaluate and determine the appropriate action regarding the complaint.

(2) Collection and review of data on the types of penalties or sanctions applied to violations.

(3) Collection and review of data on what types of complaints, allegations and final actions are reported to the appropriate resource and referral agency and the accused.

(4) Collection and review of data concerning the licensing branch's appeal process including the clarity of the procedures for filing an appeal, the specifics of the process, the uniformity of the process, on a statewide basis, the number of complaints appealed and the time periods involved with the appeals process.

(5) Collection and review of data concerning the number of child care penalties, sanctions or revocations that are appealed to the civil court structure, including how much time it takes to complete the civil court appeals process.

(6) Collection and review of data on the uniformity of training given to the child care licensing evaluators regarding handling complaints, appeals and inspection visits, including annual visits, unannounced and complaint visits.

(7) Collection and review of data on internal procedures practices in the Child Care Licensing Branch to detect and correct inconsistencies in the application of child care licensing enforcement systems for violations by child care providers.

(8) Collection and review of the number and kinds of complaints registered by providers of child care and parents against licensing evaluators.

(b) The Monitor shall annually report the findings on the application of the child care licensing enforcement system to the Legislature, the department, the State Department of Education, the Governor, and pursuant to Section 1596.873, the Child Development Programs Advisory Committee. The annual report shall include a list of recommendations for legislative reform where appropriate regarding the appropriateness and effectiveness of the penalties used.

(c) To the extent data is available, the department shall fully cooperate in providing staff assistance, materials, and data necessary for the Monitor to comply with this section.

(d) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

(e) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which

is enacted before January 1, 1996, deletes or extends that date.

SEC. 4. Section 1596.893a is added to the Health and Safety Code, to read:

1596.893a. (a) When the licensing agency has reason to believe that an unlicensed day care facility is operating or that a day care facility is in violation of the California Child Day Care Facilities Act or of the rules and regulations promulgated under the California Child Day Care Facilities Act, the agency may issue a citation to the facility. Each citation shall be in writing and shall describe with particularity the nature of the violation and the action proposed by the licensing agency. If the citation has been developed pursuant to an evaluator visit, the citation shall include the plan developed by the operator and evaluator to correct each deficiency. The citation shall be served upon the facility operator personally or through registered mail.

(b) The licensing agency shall give due consideration to the appropriateness of the penalty to the alleged violation, considering each of the following factors:

(1) The gravity of the violation.

(2) The history of previous violations.

(3) The possibility of a threat to the health or safety of any child in the facility.

(4) The number of children affected by the violation.

(5) The availability of equipment or personnel necessary to correct the violation, if appropriate.

(c) If the facility desires to contest a citation or the proposed assessment of a civil penalty, the facility shall, within 10 business days after service of the citation, notify the licensing agency in writing of a request for an informal conference. The licensing agency shall hold, within 30 days from the receipt of the request, an informal conference. At the conclusion of the conference, the licensing agency may affirm, modify, or dismiss the citation or proposed penalty. The agency shall state in writing the reasons for any action taken in the informal conference.

(d) If the penalty contained in the citation is affirmed in the informal conference, the licensing agency shall pursue enforcement of the penalty, and the facility may pursue any appeal mechanisms otherwise contained in law.

(e) The department shall implement this section during periods that Section 1596.893b is not being implemented in accordance with Section 18285.5 of the Welfare and Institutions Code.

SEC. 5. Section 1596.893 of the Health and Safety Code, as amended by Section 4 of Chapter 1316 of the Statutes of 1992, is amended and renumbered to read:

1596.893b. (a) When the licensing agency has reason to believe that an unlicensed day care facility is operating or that a day care facility is in violation of the California Child Day Care Facilities Act or of the rules and regulations promulgated under the California Child Day Care Facilities Act, the agency may issue a citation to, or

impose penalties on, the facility. Each citation shall be in writing and shall describe with particularity the nature of the violation and the action proposed by the licensing agency. If the citation has been developed pursuant to an evaluator visit, the citation shall include the plan developed by the operator and evaluator to correct each deficiency. The citation shall be served upon the facility operator personally or through registered mail. Citations and penalties of licensed child care facilities shall be applied for the sole purpose of ensuring compliance with established statutes or regulations. The department shall distinguish between all of the following:

(1) Violations that present an immediate risk to the health, safety, or personal rights of the children in care.

(2) Violations that have the potential of becoming an immediate risk to the health, safety, or personal rights of the children in care.

(3) Violations that do not present an immediate or potential risk to the health, safety, or personal rights of the children in care.

(b) Civil penalties shall be imposed in accordance with Sections 1596.99 and 1597.62 only after the day care licensee fails to correct the violation in the time period specified in the plan developed pursuant to Section 1596.98 or 1597.56 and the evaluator makes a finding that the violation presents risks identified in paragraph (1) or (2) of subdivision (a). Civil penalties shall begin to accrue on the day the evaluator revisits the site and verifies that the violation was not corrected, even if the evaluator's visit is after the time period specified in the plan.

(c) The department shall adopt regulations establishing procedures for the imposition of citations or civil penalties under this section.

(d) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

SEC. 6. Section 1596.895 of the Health and Safety Code is amended to read:

1596.895. (a) The department shall notify resource and referral agencies funded pursuant to Section 8210 of the Education Code of any priority one violation or any allegation of a priority one violation affecting the health and safety of children that is within the geographic area served by the agency. Resource and referral agencies shall use this information when deciding whether to make a referral to the licensee and shall maintain the confidentiality of information provided to them pursuant to this section.

(b) The Child Care Regulation Section shall notify these resource and referral agencies of the department's actions regarding these allegations of priority one violations within 30 days. The Child Care Regulation Section shall notify these resource and referral agencies of the department's actions regarding these allegations of priority one violations within 10 days after the allegations have been substantiated by the department.

(c) "Priority one violation" is defined to include sexual assault,

physical abuse, ritualistic abuse, or suspicious deaths, if any of the following apply:

(1) The victim is a child in care and the suspect is the facility operator, the licensee, an employee of the facility, or is yet to be identified as any of the individuals specified in this paragraph.

(2) The facility is operating and the suspect has access to the victim or potential victim.

(3) The complaint is against an unlicensed facility and either a temporary suspension order is in effect or the license has been revoked.

(d) "Allegation of a priority one violation" is defined to include any complaints of priority one violations pursuant to subdivision (c).

(e) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

SEC. 7. Section 1596.98 of the Health and Safety Code is amended to read:

1596.98. (a) The department shall notify the day care center in writing of all deficiencies in its compliance with this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the center. Upon a finding of noncompliance, the department may levy a civil penalty which shall be paid to the department each day until the department finds the center in compliance.

(b) In developing a plan of correction both the licensee and the department shall give due consideration to the following factors:

(1) The gravity of the violation.

(2) The history of previous violations.

(3) The possibility of a threat to the health or safety of any child in the facility.

(4) The number of children affected by the violation.

(5) The availability of equipment or personnel necessary to correct the violation, if appropriate.

(c) The department shall adopt regulations establishing procedures for the imposition of civil penalties under this section.

SEC. 8. Section 1597.091 of the Health and Safety Code is amended to read:

1597.091. (a) In addition to the visits required by Section 1597.09, the department shall annually make unannounced spot visits to 20 percent of all child day care centers licensed under this chapter. The unannounced visits may be made at any time during the facility's business hours. At no time shall other site visit requirements described by this section prevent a timely site visit response to a complaint as required by Section 1596.853.

(b) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

SEC. 9. Section 1597.542 of the Health and Safety Code is amended to read:

1597.542. (a) The Division of Child Care Licensing in the department shall clearly differentiate degrees of violations of the regulations adopted for purposes of this chapter by the impact upon children in care.

(b) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

SEC. 10. Section 1597.55a is added to the Health and Safety Code, to read:

1597.55a. No site visits, or unannounced visits or spot checks, shall be made under this chapter except as provided in this section.

(a) An announced site visit shall be required prior to the initial licensing of the applicant.

(b) An unannounced site visit shall be required for the renewal of a license.

(c) A public agency under contract with the department may make spot checks if it does not result in any cost to the state. However, spot checks shall not be required by the department.

(d) The department or licensing agency shall make an unannounced site visit on the basis of a complaint and a followup visit as provided in Section 1596.853.

(e) In addition to any site visit or spot check authorized under this section, the department shall annually make unannounced visits on 10 percent of all family day care homes for children licensed under this chapter. The unannounced visits may be made at any time, including the time of a request for a renewal of a license.

(f) An unannounced site visit shall adhere to both of the following conditions:

(1) The visit shall take place only during the facility's normal business hours or at any time family day care services are being provided.

(2) The inspection of the facility shall be limited to those parts of the facility in which family day care services are provided or to which the children have access.

(g) The department shall implement this section during periods that Section 1597.55b is not being implemented in accordance with Section 18285.5 of the Welfare and Institutions Code.

SEC. 11. Section 1597.55 of the Health and Safety Code, as amended by Section 10.5 of Chapter 1316 of the Statutes of 1992, is amended and renumbered to read:

1597.55b. No site visits, or unannounced visits or spot checks, shall be made under this chapter except as provided in this section.

(a) An announced site visit shall be required prior to the licensing of the applicant.

(b) An unannounced site visit shall be required on or before every third anniversary of the issuance of the license.

(c) A public agency under contract with the department may make spot checks if they do not result in any cost to the state. However, spot checks shall not be required by the department.

(d) An unannounced site visit to all licensed family day care homes shall be made annually and as often as necessary to ensure compliance. The site visits required under subdivision (b) may count towards the annual visit required by this subdivision.

(e) The department or licensing agency shall make an unannounced site visit on the basis of a complaint and a followup visit as provided in Section 1596.853. At no time shall other site visit requirements described by this section prevent a timely site visit response to a complaint.

(f) The department shall annually make unannounced spot visits on 20 percent of all family day care homes for children licensed under this chapter. The unannounced visits may be made at any time, and shall be in addition to the visits required by subdivisions (b), (c), and (d).

(g) An unannounced site visit shall comply with both of the following conditions:

(1) The visit shall take place only during the facility's normal business hours or at any time family day care services are being provided.

(2) The inspection of the facility shall be limited to those parts of the facility in which family day care services are provided or to which the children have access.

(h) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

SEC. 12. Section 1597.56 of the Health and Safety Code is amended to read:

1597.56. (a) The department shall notify a family day care home in writing of all deficiencies in its compliance with this act and the rules and regulations adopted pursuant to this act, and shall set a reasonable length of time for compliance by the family day care home. Upon a finding of noncompliance, the department may levy a civil penalty that shall be paid to the department each day until the department finds the family day care home in compliance.

(b) In developing a plan of correction, both the licensee and the department shall give due consideration to the following factors:

(1) The gravity of the violation.

(2) The history of previous violations.

(3) The possibility of a threat to the health or safety of any child in the facility.

(4) The number of children affected by the violation.

(5) The availability of equipment or personnel necessary to correct the violation, if appropriate.

(c) The department shall adopt regulations establishing procedures for the imposition of civil penalties under this section.

SEC. 13. Section 1597.62 of the Health and Safety Code is amended to read:

1597.62. (a) The department may impose civil penalties of twenty-five dollars ($25) per day for uncorrected violations that

present an immediate or potential risk to the health and safety of children in care. The penalties shall be imposed in accordance with Section 1596.893.

(b) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

SEC. 14. Section 6516.5 of the Government Code, as added by Section 1 of Chapter 1316 of the Statutes of 1992, is amended and renumbered to read:

6516.7. One or more public agencies and one or more private entities that provide child care or operate child day care facilities, as defined in Section 1596.750 of the Health and Safety Code, may enter into a joint powers agreement to form an insurance pooling arrangement for the payment of unemployment compensation or tort liability losses incurred by these public and private entities.

A joint powers agency or entity formed pursuant to this section may not elect to finance unemployment insurance coverage under Article 5 (commencing with Section 801) of Chapter 3 of Part 1 of Division 1 of the Unemployment Insurance Code unless each member entity individually satisfies the requirements set forth in Section 801 or 802 of the Unemployment Insurance Code.

Either a public agency or private entity entering into a joint powers agreement under this section shall establish or maintain a reserve fund to be used to pay losses incurred under the agreement. The reserve fund shall contain sufficient moneys to maintain the fund on an actuarially sound basis.

SEC. 15. Section 18285 of the Welfare and Institutions Code is amended to read:

18285. (a) There is hereby created in the State Treasury the Child Health and Safety Fund for the purposes specified in this section.

(b) Moneys for this fund shall be derived from the license plate program provided for pursuant to Section 5028 of the Vehicle Code and from civil penalties on family day care providers pursuant to Sections 1596.893 and 1597.62 of the Health and Safety Code.

(c) Moneys in the fund shall be expended, upon appropriation by the Legislature, for the purposes specified in subdivisions (d), (e) and (f).

(d) Fifty percent of moneys derived from the license plate program pursuant to Section 5072 of the Vehicle Code shall be available, upon appropriation, to the State Department of Social Services for the purpose of administering provisions of Sections 1596.816, 1596.87, 1596.872, 1596.8725, 1596.893, 1596.895, 1596.95, 1597.091, 1597.54, 1597.541, 1597.542, 1597.55, and 1597.62 of the Health and Safety Code, as added or amended by this bill in the 1991–92 Regular Session, that are either not funded or insufficiently funded in the 1991–92 Budget Act, as determined by the State Department of Social Services. The State Department of Social Services shall allocate these special funds according to the following

priorities:

(1) Site visits performed pursuant to Sections 1597.091 and 1597.55.

(2) The monitoring responsibility of the child care advocate program performed pursuant to Section 1596.8725.

(3) Training for investigative and licensing field staff.

(4) Other aspects of the child care advocate program performed pursuant to Section 1596.872.

(5) The salary of the chief of the child care licensing branch.

In order to implement the list of priorities set forth in this subdivision, and to complete implementation of subdivision (a) of Section 1596.816 of the Health and Safety Code, the State Department of Social Services may, as necessary, fund appropriate administrative support costs.

(e) Fifty percent of moneys derived from the license plate program pursuant to Section 5072 of the Vehicle Code shall be available, upon appropriation, for programs which address any of the following child health and safety concerns and that are either to be carried out within a two-year period or whose implementation is dependent upon one-time initial funding:

(1) Child abuse prevention, except that not more than 25 percent of the moneys in this fund shall be used for this purpose. Ninety percent of the 25 percent shall be deposited in the county children's trust fund, established pursuant to Section 18966 of the Welfare and Institutions Code, for the support of child abuse prevention services in the community, and 10 percent of the 25 percent shall be deposited in the State Children's Trust Fund, established pursuant to Section 18969, for public education, training, and technical assistance.

(2) Vehicular safety, including restraint warnings and education programs.

(3) Drowning prevention.

(4) Playground safety standards.

(5) Bicycle safety.

(6) Gun safety.

(7) Fire safety.

(8) Poison control and safety.

(9) In-home safety.

(10) Childhood lead poisoning.

(11) Sudden infant death syndrome.

(f) Moneys derived from civil penalties imposed on family day care providers shall be available, upon appropriation, to the State Department of Social Services exclusively for orientation, training, and education of family day care providers.

SEC. 16. Section 18285.5 is added to the Welfare and Institutions Code, to read:

18285.5. (a) It is the intent of the Legislature that the priorities and programs set forth in subdivisions (d) and (e) of Section 18285 be funded and implemented in the order they are listed, and that

each priority and program may be funded and implemented independently of the other priorities and programs.

(b) The Director of Motor Vehicles and the Director of Social Services shall annually make a determination whether the total annual receipts for the "Have a Heart, Be a Star, Help Our Kids" license plate program established pursuant to Article 8.4 (commencing with Section 5072) of Chapter 1 of Division 3 of the Vehicle Code is sufficient to cover the priorities and programs described in subdivisions (d) and (e) of Section 18285. If sufficient funds are available to cover any of the priorities or programs described in subdivisions (d) and (e) of Section 18285, the department shall implement that priority or program.

SEC. 17. Section 16 of Chapter 1316 of the Statutes of 1992 is repealed.

SEC. 18. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to correct ambiguities contained in existing law, at the earliest possible time, concerning the authority of the State Department of Social Services to establish a child care ombudsman program, to issue citations for violation of the California Child Day Care Facilities Act or the rules and regulations adopted under that act, to make announced and unannounced site visits to child day care facilities, and to make other revisions concerning the authority and procedures of the department when levying civil penalties against care facilities, it is necessary that this act take effect immediately.

CHAPTER 727

An act to amend Sections 68097, 68097.1, and 68097.2 of the Government Code, relating to civil actions.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 68097 of the Government Code, as amended by Section 11 of Chapter 158 of the Statutes of 1993, is amended to read:

68097. Witnesses in civil cases may demand the payment of their mileage and fees for one day, in advance, and when so demanded shall not be compelled to attend until the allowances are paid except as hereinafter provided for employees of the Department of Justice who are peace officers or analysts in technical fields, members of the California Highway Patrol, members of the California State Police, peace officer members of the State Fire Marshal's office, other state

employees, sheriffs, deputy sheriffs, marshals, deputy marshals, district attorney inspectors, probation officers, building inspectors, firefighters, and city police officers.

For the purposes of this section and Sections 68097.1 through 68097.10, the term "member of the California Highway Patrol" shall include those persons employed as vehicle inspection specialists by the California Highway Patrol, the term "firefighter" has the definition provided in Section 50925, and a volunteer firefighter shall be deemed to be employed by the public entity for which he or she volunteers as a firefighter.

SEC. 2. Section 68097.1 of the Government Code, as amended by Section 12 of Chapter 158 of the Statutes of 1993, is amended to read:

68097.1. (a) Whenever an employee of the Department of Justice who is a peace officer or an analyst in a technical field, member of the California Highway Patrol, member of the California State Police, peace officer member of the State Fire Marshal's office, sheriff, deputy sheriff, marshal, deputy marshal, district attorney inspector, probation officer, building inspector, firefighter, or city police officer is required as a witness before any court or other tribunal in any civil action or proceeding in connection with a matter regarding an event or transaction which he or she has perceived or investigated in the course of his or her duties, a subpoena requiring his or her attendance may be served by delivering a copy either to the person personally, or by delivering two copies to his or her immediate superior at the public entity by which he or she is employed or an agent designated by that immediate superior to receive that service.

(b) Whenever any other state employee is required as a witness before any court or other tribunal in any civil action or proceeding in connection with a matter, event, or transaction concerning which he or she has expertise gained in the course of his or her duties, a subpoena requiring his or her attendance may be served by delivering a copy either to the person personally or by delivering two copies to his or her immediate superior or agent designated by that immediate superior to receive that service.

(c) The attendance of any person described in subdivisions (a) and (b) may be required pursuant to this section only in accordance with Section 1989 of the Code of Civil Procedure.

(d) As used in this section and in Sections 68097.2 and 68097.5, "tribunal" means any person or body before whom or which attendance of witnesses may be required by subpoena, including an arbitrator in arbitration proceedings.

SEC. 3. Section 68097.2 of the Government Code, as amended by Section 13 of Chapter 158 of the Statutes of 1993, is amended to read:

68097.2. (a) Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, any firefighter, or any state employee, or county employee, who is obliged by a subpoena issued pursuant to Section 68097.1 to attend as a witness, shall receive the salary or other compensation to

which he or she is normally entitled from the public entity by which he or she is employed during the time that he or she travels to and from the place where the court or other tribunal is located and while he or she is required to remain at that place pursuant to the subpoena. He or she shall also receive from the public entity by which he or she is employed the actual necessary and reasonable traveling expenses incurred by him or her in complying with the subpoena.

(b) The party at whose request the subpoena is issued shall reimburse the public entity for the full cost to the public entity incurred in paying the peace officer, firefighter, state employee, or specified county employee his or her salary or other compensation and traveling expenses as provided for in this section, for each day that the peace officer, firefighter, state employee, or specified county employee is required to remain in attendance pursuant to the subpoena. The amount of one hundred fifty dollars ($150), together with the subpoena, shall be tendered to the person accepting the subpoena for each day that the peace officer, firefighter, state employee, or specified county employee is required to remain in attendance pursuant to the subpoena.

(c) If the actual expenses should later prove to be less than the amount tendered, the excess of the amount tendered shall be refunded.

(d) If the actual expenses should later prove to be more than the amount deposited, the difference shall be paid to the public entity by the party at whose request the subpoena is issued.

(e) If a court continues a proceeding on its own motion, no additional witness fee shall be required prior to the issuance of a subpoena or the making of an order directing the peace officer, firefighter, or state employee to appear on the date to which the proceeding is continued.

(f) For the purposes of the payment of the salary or other compensation of a volunteer firefighter pursuant to subdivision (a), a volunteer firefighter who is subpoenaed to appear as a witness in connection with a matter regarding an event or transaction which he or she has perceived or investigated in the course of his or her duties as a volunteer firefighter, shall be deemed to be entitled to reasonable compensation evidenced by the compensation paid to firefighters in jurisdictions with similar geographic and economic characteristics. However, the requirements of subdivision (a) and of this subdivision are not applicable if a volunteer firefighter will receive his or her regular salary or other compensation pursuant to the policy of his or her regular employer, for the periods during which compensation is required under subdivision (a).

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2

of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 728

An act to amend Sections 16720, 17600.10 and 17609.05 of, to add Sections 16990.9 and 17600.09 to, the Welfare and Institutions Code and to amend Section 209 of Chapter 89 of the Statutes of 1991, relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 16720 of the Welfare and Institutions Code is amended to read:

16720. (a) (1) This part shall remain operative only with respect to funds appropriated for this part for those fiscal years through and including the 1990–91 fiscal year, except those sections specified in paragraph (2).

(2) The following sections shall remain operative:

(A) Sections 16713, 16715, 16717, and 16718.

(B) Section 16712, to the extent that section authorizes CMSP regulations existing on June 30, 1991.

(b) This part shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 2. Section 16990.9 is added to the Welfare and Institutions Code, to read:

16990.9. The level of financial maintenance of effort required of a county that contracts with the department pursuant to Section 1157.1 of the Health and Safety Code during the 1991–92, 1992–93, or 1993–94 fiscal year may be reduced by the amount of local public health service funds retained by the county for that fiscal year that are unexpended as a result of vacant contracted positions.

SEC. 3. Section 17600.10 of the Welfare and Institutions Code is amended to read:

17600.10. (a) Each county and city and county receiving funds in accordance with this chapter shall establish and maintain a local health and welfare trust fund comprised of the following accounts:

(1) The mental health account.

(2) The social services account.

(3) The health account.

(b) Each city receiving funds in accordance with this chapter shall establish and maintain a local health and welfare trust fund comprised of a health account and a mental health account.

SEC. 4. Section 17609.05 of the Welfare and Institutions Code is amended to read:

17609.05. (a) Each county, city, or city and county shall file with the Controller quarterly and annual reports of trust fund deposits and disbursements within 60 days after the end of the quarter.

(b) The Controller shall verify deposits and notify appropriate state agencies upon request of deficits in deposits. The next scheduled allocations shall not be made until deposits are made accordingly. Reports shall be forwarded to the appropriate state department for expenditure verification.

SEC. 5. Section 17609.09 is added to the Welfare and Institutions Code, to read:

17609.09. Whenever a distribution is made to counties, cities, and cities and counties, the Controller shall provide a remittance advice, identifying the amounts that are provided from each account or subaccount in the Local Revenue Fund and identifying the account in the local health and welfare trust fund into which the funds shall be deposited.

SEC. 6. Section 209 of Chapter 89 of the Statutes of 1991 is amended to read:

Sec. 209. (a) In the event of a determination by the Commission on State Mandates, which is not appealed by the Director of Finance in accordance with subdivision (c), or a final judicial determination by a California court of appellate jurisdiction that any provision of this act is a state-mandated local program requiring state reimbursement to a local agency or school district within the meaning of Section 6 of Article XIII B of the California Constitution, the provisions of this act shall become inoperative 60 days following the date on which the Commission on State Mandates adopts an estimated statewide cost of reimbursement pursuant to such a commission decision finding a state mandate, or following the date on which the first such judicial determination becomes final.

(b) This section shall be operative only in the event that the estimated statewide cost of reimbursement exceeds one million dollars ($1,000,000) per year. The estimated cost of reimbursement for purposes of this one million dollar ($1,000,000) limitation shall be determined by reference to the estimated statewide cost of the mandate adopted by the Commission on State Mandates if the estimate is made and adopted. If the commission has not adopted such a report, the estimated statewide cost of reimbursement shall be determined by the Director of Finance.

(c) This act shall not become inoperative pursuant to subdivision (a) if the Director of Finance files a written Notice of Intent to Appeal with the Commission on State Mandates within 60 days of the

adoption of an estimated statewide cost of reimbursement pursuant to a decision by the commission finding that any of the provisions of this act is a state-mandated local program requiring reimbursement within the meaning of Section 6 of Article XIII B of the California Constitution. The Notice of Intent to Appeal specified by this subdivision shall consist of a written notice setting forth the intention of the Director of Finance to seek judicial review of the decision of the Commission on State Mandates that is received by the commission within the time specified.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify the law relating to the implementation of appropriate local health and welfare funding procedures at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 729

An act to add Section 1367.15 to the Health and Safety Code, and to add Section 10176.10 to the Insurance Code, relating to health insurance.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1367.15 is added to the Health and Safety Code, to read:

1367.15. (a) This section shall apply to individual health care service plan contracts and plan contracts sold to employer groups with fewer than three eligible employees as defined in subdivision (b) of Section 1357 covering hospital, medical, or surgical expenses, which is issued, amended, delivered, or renewed on or after January 1, 1994.

(b) As used in this section, "block of business" means individual plan contracts or plan contracts sold to employer groups with fewer than three eligible employees as defined in subdivision (b) of Section 1357, with distinct benefits, services, and terms. A "closed block of business" means a block of business for which a health care service plan ceases to actively offer or sell new plan contracts.

(c) No block of business shall be closed by a health care service plan unless (1) the plan permits an enrollee to receive health care services from any block of business that is not closed and which provides comparable benefits, services, and terms, with no additional underwriting requirement, or (2) the plan pools the experience of

the closed block of business with all appropriate blocks of business that are not closed for the purpose of determining the premium rate of any plan contract within the closed block, with no rate penalty or surcharge beyond that which reflects the experience of the combined pool.

(d) A block of business shall be presumed closed if either of the following is applicable:

(1) There has been an overall reduction in that block of 12 percent in the number of in force plan contracts for a period of 12 months.

(2) That block has less than 1,000 enrollees in this state. This presumption shall not apply to a block of business initiated within the previous 24 months, but notification of that block shall be provided to the commissioner pursuant to subdivision (e).

The fact that a block of business does not meet one of the presumptions set forth in this subdivision shall not preclude a determination that it is closed as defined in subdivision (b).

(e) A health care service plan shall notify the commissioner in writing within 30 days of its decision to close a block of business or, in the absence of an actual decision to close a block of business, within 30 days of its determination that a block of business is within the presumption set forth in subdivision (d). When the plan decides to close a block, the written notice shall fully disclose all information necessary to demonstrate compliance with the requirements of subdivision (c). When the plan determines that a block is within the presumption, the written notice shall fully disclose all information necessary to demonstrate that the presumption is applicable. In the case of either notice, the plan shall provide additional information within 15 days after any request of the commissioner.

(f) A health care service plan shall preserve for a period of not less than five years in an identified location and readily accessible for review by the commissioner all books and records relating to any action taken by a plan pursuant to subdivision (c).

(g) No health care service plan shall offer or sell any contract, or provide misleading information about the active or closed status of a block of business, for the purpose of evading this section.

(h) A health care service plan shall bring any blocks of business closed prior to the effective date of this section into compliance with the terms of this section no later than December 31, 1994.

(i) This section shall not apply to health care service plan contracts providing small employer health coverage to individuals or employer groups with fewer than three eligible employees if that coverage is provided pursuant to Article 3.1 (commencing with Section 1357) and, with specific reference to coverage for individuals or employer groups with fewer than three eligible employees, is approved by the commissioner pursuant to Section 1357.15, provided a plan electing to sell coverage pursuant to this subdivision shall do so until such time as the plan ceases to market coverage to small employers and complies with subdivision (c) of Section 1357.11.

(j) This section shall not apply to coverage of Medicare services

pursuant to contracts with the United States government, Medicare supplement, dental, vision, or conversion coverage.

SEC. 2. Section 10176.10 is added to the Insurance Code, to read:

10176.10. (a) On or after January 1, 1994, no disability insurer issuing policies covering hospital, surgical, or medical expenses delivered or renewed in this state or certificates of group disability insurance delivered or renewed in this state pursuant to a master group policy delivered or renewed in another state, to individuals, or to employer groups with fewer than three eligible employees, as defined in subdivision (g) of Section 10700, shall close a block of business without complying with this section.

(b) As used in this section, "block of business" means individual, group, or blanket disability insurance contracts covering hospital, medical, or surgical expenses of a particular policy form that has distinct benefits or marketing methods. "Closed block of business" means a block of business for which an insurer ceases to actively market and sell new contracts under a particular policy form in this state.

(c) Notwithstanding subdivision (b), a block of business shall be presumed closed if either of the following applies:

(1) There has been an overall reduction of 12 percent in the number of in force policies of a particular form for a period of 12 months.

(2) The block has less than 2,000 insured nationally or 1,000 insureds in California. This presumption shall not apply to a block of business initiated within the previous 24 months, but notification of that block shall be provided to the commissioner. The notification shall not be subject to the approval required by subdivision (d).

An insurer may present evidence for consideration by the commissioner that the presumption in the particular case is incorrect. Should the determination be made that the block is closed, the insurer shall be given those remedy options contained in subdivision (d). The fact that a block of business does not meet one of the presumptions set forth in this subdivision shall not preclude a determination that it is closed as defined in subdivision (b).

(d) An insurer shall notify the commissioner within 30 days of its decision to close a block or, in the absence of an actual decision to close a block of business, within 30 days of its determination that the block is within the presumptions set forth in subdivision (c). The commissioner may notify an insurer that he or she has determined that the presumptions contained in subdivision (c) apply to a block. No insurer providing disability insurance covering hospital, medical, or surgical expenses shall close a policy form or group certificate without notification to the commissioner. That notification shall include a plan to permit an insured to move to any open block, providing comparable benefits with no additional underwriting requirement or, alternatively, the insurer shall be required to pool the closed block's experience with all appropriate open forms for purposes of renewal rate determination, with no rate penalty or

surcharge, beyond that which reflects the experience of the combined pool. When the insurer chooses to pool, the notice shall include the insurer's plan for pooling the closed block's experience. The insurer may implement the pooling plan if 30 days expire after the submission is filed without written notice from the commissioner specifying the reasons for his or her opinion that the pooling plan does not comply with the requirements of this section, or, prior to that time, if the commissioner provides the insurer written notice that the pooling plan complies with the requirements of this section.

The approval shall be based upon consideration of the accumulative recent and expected future experience of the closed form and those with which the closed form is to be combined.

(e) No insurer shall offer or sell any form nor provide misleading information about the active or closed status of its business for the purpose of evading this section.

(f) An insurer shall bring any blocks of business closed prior to the effective date of this section into compliance with the terms of this section no later than December 31, 1994.

(g) This section shall not apply to small employer carriers providing small employer health insurance to individuals or employer groups with fewer than three eligible employees if that coverage is provided pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2, and with specific reference to coverage for individuals or employer groups with fewer than three eligible employees, is approved by the commissioner pursuant to Section 10705, provided a carrier electing to sell coverage pursuant to this subdivision shall continue to do so until such time as the carrier ceases to market coverage to small employers and complies with subdivision (c) of Section 10713.

(h) This section shall not apply to accident only coverage, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement coverage, long-term care insurance, dental, vision, or conversion coverage, coverage issued as a supplement to liability insurance, or automobile medical payment insurance.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 730

An act to amend Section 8598 of the Fish and Game Code, relating to commercial fishing.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 8598 of the Fish and Game Code is amended to read:

8598. (a) Notwithstanding Section 8140 or subdivision (b) of Section 8597, specimens of the following groups or species shall not be taken or possessed for commercial purposes:

(1) Invertebrates:

(A) Phylum Porifera—all sponges.

(B) Genus Pelagia sp.—jellyfish.

(C) Coelenterata—corals, anemones; all species.

(D) Order Gorgonacea—all gorgonians.

(E) Order Pennatulacea—all species, except Renilla kollikeri.

(F) Feather-duster worm—Eudistylia polymorpha.

(G) Fiddler crab—Uca crenulata.

(H) Umbrella crab—Cryptolithodes sitchensis.

(I) Stalked or goose barnacles—Pollicipes sp.

(J) Giant acorn barnacle—Balanus nubilus or B. aguila.

(K) Owl limpet—Lottia gigantea.

(L) Coffee bean shells—Trivia sp.

(M) Three-winged murex—Pteropurpura trialata.

(N) Vidler's simnia—Simnia vidleri.

(O) Queen tegula—Tegula regina.

(P) Opisthobranchia (including nudibranchs)—all subclass Opisthobranchia species except:

(i) Sea hares—Aplysia californica and Aplysia vaccaria.

(ii) Hermissenda crassicornis.

(iii) Lion's mouth—Melibe leonina.

(iv) Aeolidia papillosa.

(v) Spanish shawl—Flabellina iodinea.

(2) Vertebrates:

(A) All shark and ray eggcases.

(B) Brown smoothhound sharks—Mustelus hinlei.

(C) Family Agonidae—all poachers.

(D) Wolf-eel—Anarrhichthys ocellatus.

(E) Juvenile sheephead—Semicossyphus pulcher (under 6 inches).

(3) Live rocks.

(A) Rocks with living organisms attached, commonly called "live rocks," shall not be taken or possessed except as provided in subparagraph (C).

(B) Rocks shall not be broken to take marine aquaria species and any rock displaced to access any such species shall be returned to its original position.

(C) Rocks cultured under the authority of an aquaculture registration may be possessed.

(b) Garibaldi—Hypsypops rubicundus may not be taken under a marine aquaria collector's permit from February 1, to October 31, inclusive.

(c) No organisms may be taken for marine aquaria pet trade purposes under the terms of a marine aquaria collector's permit in any of the following areas:

(1) On the north side of Santa Catalina Island from a line extending three nautical miles 90 degrees true from Church Rock to a line extending three nautical miles 270 degrees true from the extreme west end of the island.

(2) Until January 1, 2000, on the south or "back" side of Santa Catalina Island from a line extending three nautical miles 90 degrees true from Church Rock to a line extending three nautical miles 270 degrees true from the extreme west end of the island.

(3) Marine life refuges, marine reserves, ecological reserves, and state reserves.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 731

An act to amend Sections 15003, 15012, 15020.2, 15020.3, 15020.5, 15021, 15023, 15024, 15025, 15031, 15032, 15033, 15037, 15043, 15045, 15050, 15055, 15061, 15064, 15077.5, 15082, and 16002 of, and to repeal Sections 15020.4, 15027, and 15063 of, the Unemployment Insurance Code, relating to employment training.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 15003 of the Unemployment Insurance Code is amended to read:

15003. The Legislature finds and declares that Section 126 of the

federal Job Training Partnership Act allows the enactment of state legislation to implement the federal Job Training Partnership Act programs, provided the state legislation is consistent with that federal act.

SEC. 2. Section 15012 of the Unemployment Insurance Code is amended to read:

15012. (a) Procedures and criteria for determining the eligibility of persons provided services under this division with federal funds received through the federal Job Training Partnership Act shall be in accordance with the provisions of that act.

(b) For purposes of participation and reporting of participation in programs funded under the Job Training Partnership Act only, and notwithstanding Sections 48260 and 54662 of the Education Code, a school dropout is defined as an individual who is no longer attending any school and who has not received a secondary school diploma or a certificate from a program of equivalency for that diploma.

(c) For purposes of authorizing a minor to participate in Job Training Partnership Act programs, the signature of a parent, guardian, or other responsible adult is required.

SEC. 3. Section 15020.2 of the Unemployment Insurance Code is amended to read:

15020.2. Each service delivery area shall meet the following criteria:

(a) Be comprised of one or more units of general local government.

(b) Promote effective delivery of services to individuals pursuant to this division.

(c) Be consistent with labor market areas or standard metropolitan statistical areas. However, this subdivision shall not be construed to require designation of an entire labor market area as a service delivery area.

(d) Be consistent with areas in which related services are provided under other state or federal programs.

SEC. 4. Section 15020.3 of the Unemployment Insurance Code is amended to read:

15020.3. The Governor shall approve a request to be a service delivery area from any of the following:

(a) Any unit of general local government with a population of 200,000 or more.

(b) Any consortium of contiguous units of general local government with an aggregate population of 200,000 or more that serves a substantial part of one or more labor market areas.

SEC. 5. Section 15020.4 of the Unemployment Insurance Code is repealed.

SEC. 6. Section 15020.5 of the Unemployment Insurance Code is amended to read:

15020.5. The final designation, approval, denial, or redesignation of service delivery areas by the Governor shall be consistent with the requirements of the federal Job Training Partnership Act (P.L.

97-300), as amended.

SEC. 7. Section 15021 of the Unemployment Insurance Code is amended to read:

15021. The private industry council and appropriate chief elected official or officials in each service delivery area shall determine the entity to administer the service delivery area plan and the organization and structure necessary to administer the system of services provided pursuant to Section 15020. The administrative structure, however, shall, to the extent feasible, provide for the integration of the application of and access to employment and training services with the local organizational structure for administering benefits under the Aid to Families with Dependent Children program and other public assistance programs. In addition, the private industry council and appropriate chief elected official or officials in each service delivery area shall, to the extent feasible, promote the integration of employment and training resources available within the service delivery area to eligible participants into a comprehensive employment services system.

SEC. 8. Section 15023 of the Unemployment Insurance Code is amended to read:

15023. (a) In their administration and management of the services system established under this chapter, the appropriate local elected officials in each service delivery area shall act in a manner that promotes and supports the powers, duties, and functions of the local private industry council as set forth in Chapter 4 (commencing with Section 15030).

(b) The unit of general local government or each unit of general local government that is a member of a consortium described in Section 15025, that has been designated by the Governor as a service delivery area pursuant to this chapter and the federal Job Training Partnership Act (P.L. 97-300), as amended, shall be liable to the agency designated by the Governor pursuant to Section 15050 for all funds not expended in accordance with this division, and shall return to that agency all of those funds.

SEC. 9. Section 15024 of the Unemployment Insurance Code is amended to read:

15024. In accordance with Section 107 of the federal Job Training Partnership Act (P.L. 97-300), as amended, the entity administering the service delivery area plan in each service delivery area may contract with state departments or public and private agencies or organizations for the provision of services to persons eligible under this division who need or would benefit from those services. Funds provided under the federal Job Training Partnership Act (P.L. 97-300), as amended, shall not be used to duplicate facilities or services available in the area, either with or without reimbursement from federal, state, or local sources, unless it is demonstrated that alternative services or facilities would be more effective or more likely to achieve the service delivery area's performance goals.

SEC. 10. Section 15025 of the Unemployment Insurance Code is

amended to read:

15025. When contiguous units of general local government form a consortium designated by the Governor as a service delivery area pursuant to Section 15050, these local government entities shall establish a joint powers entity through a joint powers agreement that empowers the entity to fulfill the requirements of this division and the federal Job Training Partnership Act (P.L. 300), as amended. The department shall give its full cooperation and assistance in assuring the effective, efficient formulation and operations of the consortium.

SEC. 11. Section 15027 of the Unemployment Insurance Code is repealed.

SEC. 12. Section 15031 of the Unemployment Insurance Code is amended to read:

15031. (a) The service delivery area's private industry council shall be appointed by the chief elected officials of the local government unit or units involved, and shall be of the size as the unit or units deem appropriate for the purposes of this division, except that service delivery areas with a total population in excess of 2,500,000 persons shall have a minimum of 29 members.

(1) The chairperson and at least one-half of the remaining members shall represent both large and small businesses in the private sector, who shall be owners of business concerns, chief executives or chief operating officers of business concerns who have or have had substantial policy and management responsibility, or their designees.

(2) (A) Not less than 15 percent of the members shall represent organized labor and community-based organizations, including those serving minority populations, and shall include minority representatives, as appropriate.

(B) The labor representatives on the council shall be selected from individuals recommended by recognized state and local labor federations. If the state or local labor federation fails to nominate a sufficient number of individuals to meet the labor representation requirements, individual workers may be included on the council to complete the labor representation.

(3) Additional members shall represent each of the following:

(A) Educational agencies that shall be representative of all educational agencies in the service delivery area.

(B) Vocational rehabilitation agencies.

(C) Public assistance agencies.

(D) Economic development agencies.

(E) The public employment service funded under the federal Wagner-Peyser Act.

(4) Education representatives on the council shall be selected from among individuals nominated by regional or local educational agencies, vocational education institutions, institutions of higher education (including entities offering adult education), or general organizations of these agencies or institutions within the service delivery area.

(5) The remaining members of the council shall be selected from individuals recommended by interested organizations.

(6) The composition of the private industry council shall, to the extent feasible, represent the racial and ethnic characteristics of the service delivery area.

(b) The representatives on the council designated in paragraphs (1), (2), and (3) of subdivision (a) shall be selected in accordance with the federal Job Training Partnership Act.

(c) Members shall be appointed for fixed and staggered terms of a duration deemed appropriate by the chief elected officials in the service delivery area, but in any case shall not be less than two years. Members may serve past the expiration date of their appointment until their successors are appointed.

(d) No member representing private industry may be represented by an alternate at meetings of the council.

(e) All vacancies occurring subsequent to the initial appointments to the private industry council shall be filled within 60 days of their occurrence in the same manner as the original appointments by the chief elected official or officials in the service delivery area.

SEC. 13. Section 15032 of the Unemployment Insurance Code is amended to read:

15032. It shall be the duty of the council to:

(a) Design and plan the program of job preparation and training services for the service delivery area, which shall include all of the following:

(1) Establishing the service delivery area's eligibility and services priorities.

(2) Determining the types of services and training to be provided.

(3) Determining the industries and occupations for training.

(4) Establishing criteria for the content and quality of training.

(5) Determining the entities which will deliver the training and services.

(6) Determining the annual utilization of available funds and resources and preparing the program budget.

(b) Survey local employment needs and local economic conditions, including a description of:

(1) Unemployed, underemployed and "discouraged" workers.

(2) Jobs lost and jobs created in the region.

(3) Local labor market supplies and migratory patterns.

(4) Labor force training needs and skills assessment.

(5) Linkages with small businesses.

(6) Economic development strategies, implemented or planned for the region and their employment impact.

(7) Employment by private industry receiving contracts, loans, industrial revenue bonds, grants, tax abatements or preferential zoning from the local governing body.

(c) Guide the development of the service delivery area plan prepared in accordance with the provisions of Chapter 5 (commencing with Section 15040) to assure that it conforms with the

priorities, criteria and standards set forth by the council pursuant to subdivision (a).

(d) Monitor the performance of the job preparation and training services system to assure its compliance with the service delivery area plan, and through utilization of performance criteria established pursuant to this division, assess the levels of success achieved by the system. Where the system's performance is not up to standard, the council shall propose modifications which maximize successful outcomes.

(e) Assure that the system is fully responsive to the employment needs of the private sector, program participants, and the economic conditions occurring within the service delivery area, and assure that the system is compatible with and supportive of federal, state and local business and economic development activities occurring within the service delivery area.

(f) Promote the integration of the system with all other job training, vocational education, and employment services resources available within the service delivery area, including the joint development of plans with the Employment Development Department for local offices for employment services, local educational agencies for vocational education programs pursuant to the provisions of Chapter 7 (commencing with Section 15070), and county welfare departments for services to participants under Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(g) Promote the transition of participants served by the system into full-time unsubsidized jobs with special emphasis on nontraditional jobs in the private sector for women.

For purposes of this subdivision, nontraditional employment in the private sector for women shall be deemed to include employment in any occupation in which not more than 25 percent of the employees are women.

(h) Consult quarterly with the local child care resource and referral agency to review data on the need for child care and development services for participants eligible for services under this division.

(i) Develop and implement a plan for participation in the planning process, program development, and program evaluation by representatives of eligible participants and service providers within the service delivery area, including all types of public and private vocational education agencies and schools, public assistance recipients, participants in services under this division, and child care resource and referral agencies.

(j) Prepare and distribute to interested parties a quarterly program assessment for review and comment.

SEC. 14. Section 15033 of the Unemployment Insurance Code is amended to read:

15033. The chief elected official or officials for the service delivery area shall, every two years following the Governor's biennial

certification of the private industry council, appoint a chairperson from among the private sector members on the private industry council. The private industry council may appoint other officers as it deems necessary.

SEC. 15. Section 15037 of the Unemployment Insurance Code is amended to read:

15037. The state council shall:

(a) Develop and recommend to the Governor and the Legislature a coordination and special services plan, which includes a dislocated workers assistance plan, in accordance with Chapter 4.5 (commencing with Section 10510) of Part 1 of Division 3.

(b) Recommend to the Governor local service delivery areas. To the extent permitted by federal law, designation of service delivery areas shall reflect the intent of the Legislature to integrate and coordinate employment and training services, public assistance programs, and other educational and training efforts as may exist which are designed to assist individuals in preparing for participation in the labor force.

(c) To the extent permitted by federal law, establish policies which shall be followed by the department in performing all of the following functions:

(1) Approval of local service delivery area plans.

(2) Establishment of standards, criteria, and reporting requirements established by the department pursuant to this division with respect to local service delivery area plans.

(3) Allocation of funds for local service delivery area plans, including funds for plans submitted under Chapter 7.5 (commencing with Section 15075).

(d) Plan, review and approve the allocation, recapture, and reallocation of federal funds received by the state pursuant to the federal Job Training Partnership Act. Funds received by the state in accordance with Sections 202 (c) (1) (C) and 262 (c) (1) (C) of that act shall be allocated to the Superintendent of Public Instruction as necessary to meet the need determined by the superintendent pursuant to Section 33117.5 of the Education Code. The state council shall be deemed to have approved the disbursement of funds when the Governor approves a decision of the state council specifying a budget for an authorized program or activity and designating the department or agency responsible for the expenditure of the budgeted funds. An agreement shall be entered into between the Employment Development Department and the State Department of Education and shall provide that Job Training Partnership Act funds provided for the purposes of Section 33117.5 of the Education Code shall be utilized for payment to local educational agencies.

(e) Review and approve the annual labor market and occupational supply and demand information plan developed pursuant to Section 10532.

(f) Consider and advise the director on all matters connected with the administration of this code as submitted to it by the director, and

may upon its own initiative recommend changes in administration as it deems necessary.

(g) Review and comment to the Governor and the Legislature on the annual report prepared in accordance with Section 15064.

(h) Serve as the body responsible for making recommendations to the Governor when the director proposes to withdraw funding pursuant to Section 15028.

SEC. 16. Section 15043 of the Unemployment Insurance Code is amended to read:

15043. Service delivery area plans shall contain provisions required by the federal Job Training Partnership Act and this division, including all of the following:

(a) Identification of the entity that will administer the program and be the grant recipient of funds from the state.

(b) Provisions for coordinating particular aspects of the service delivery area program with other programs and service providers in the labor market area if there is more than one service delivery area in a single labor market area, including provisions for all of the following:

(1) Assessing needs and problems in the labor market that form the basis for program planning.

(2) Ensuring access by program participants in each service delivery area to skills training and employment opportunities throughout the entire labor market.

(3) Coordinating or jointly implementing job development, placement, and other employer outreach activities.

(4) Entering into agreements and contracts between service delivery areas to pay or share the cost of services.

(c) A description of methods of complying with the coordination criteria contained in the Governor's coordination and special services plan.

(d) A description of linkages established with appropriate agencies designed to enhance the provision of services and avoid duplication, including, but not limited to, the following:

(1) Agreements with appropriate educational agencies.

(2) Arrangements with other education, training, and employment programs authorized by federal and state law.

(3) If appropriate, joint programs in which activities supported with assistance under this division are coordinated with activities such as service opportunities and youth corps programs supported with assistance made available under the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.).

(4) Efforts to ensure the effective delivery of services to participants in coordination with local welfare agencies and other local agencies, community-based organizations, volunteer groups, business and labor organizations, and other training, education, employment, and social service programs.

(e) Goals and objectives for the programs, including, but not limited to, the following:

(1) A description of the manner in which the program will contribute to the economic self-sufficiency of participants, and the productivity of the local area and the nation.

(2) Performance standards established in accordance with standards prescribed under Section 15055 and the federal Job Training Partnership Act (P.L. 97-300), as amended.

(f) Procedures for identifying and selecting participants, including, but not limited to, the following:

(1) Goals for the training and placement of hard-to-serve individuals, and a description of efforts to be undertaken to accomplish those goals.

(2) Outreach efforts to recruit and expand awareness of training and placement opportunities for those individuals.

(3) Types of services to be provided to address the special needs of those individuals.

(g) Goals for the training of women in nontraditional employment, and the training-related placement of women in nontraditional employment and apprenticeships, and a description of efforts to be undertaken to accomplish these goals, including efforts to increase awareness of any training and placement opportunities.

(h) Adult and youth program budgets for two program years and any proposed expenditures for the succeeding two program years.

(i) A description of all of the following:

(1) The assessment process that will identify participant skill levels.

(2) The process for providing information and referrals for applicants and participants relating to appropriate programs and service providers.

(3) The services to be provided, including the means for involving labor organizations and community-based organizations in the provision of services, the estimated duration of service, and the estimated training cost per participant.

(4) The competency levels to be achieved by participants as a result of program participation.

(5) The procedures for evaluating the progress of participants in achieving competencies.

(j) A description, where applicable, of the procedures and methods of carrying out the Jobs for Employable Dependent Individuals Incentive Bonus Program (Title V) of the federal Job Training Partnership Act (P.L. 97-300), as amended.

(k) Procedures for selecting service providers, that shall take into account both of the following:

(1) The past performance of the providers with regard to job training, basic skills training, or related activities, fiscal accountability, and ability to meet performance standards.

(2) The ability of the providers to provide services that can lead to achievement of competency standards for participants with identified deficiencies.

(*l*) Fiscal control, including, but not limited to, procurement, monitoring, and management information system requirements, accounting, audit, and debt collection procedures, to assure the proper disbursal of, and accounting for, funds received under Title II of the federal Job Training Partnership Act (P.L. 97-300), as amended.

(m) Procedures for the preparation and submission of an annual report to the Governor, that shall include all of the following:

(1) A description of activities conducted during the program year.

(2) A description of the characteristics of participants.

(3) Information on the extent to which applicable performance standards were met.

(4) Information on the extent to which the service delivery area has met the goals of the area for the training and training-related placement of women in nontraditional employment and apprenticeships.

(5) A statistical breakdown of women trained and placed in nontraditional occupations, including information regarding the type of training received by occupation, and information regarding whether the participant was placed in a job or apprenticeship. If the participant was placed in a job or apprenticeship, the breakdown shall include the following information:

(A) The occupation and wage at placement.

(B) The age of the participant.

(C) The race of the participant.

(D) The period of retention of the participant in nontraditional employment.

SEC. 17. Section 15045 of the Unemployment Insurance Code is amended to read:

15045. The opportunity shall be provided for public review and comment on the plan prior to final approval and in accordance with procedures that the chief elected officials determine are reasonable and appropriate, that are consistent with the public review and comment provisions required by the federal Job Training Partnership Act (P.L. 97-300), as amended, and that include a public hearing on the proposed plan by the private industry council, with at least 10 days' advance public notice, prior to submission to the chief elected official or officials, and a response, in writing, from the private industry council or the chief elected official or officials, or both, with respect to any comments submitted concerning the plan as a part of the plan to be submitted to the department.

SEC. 18. Section 15050 of the Unemployment Insurance Code is amended to read:

15050. The Governor shall, after receiving the recommendation of the State Job Coordinating Council, designate directly or by contract the agency or agencies responsible for the provisions of this division.

The functions of the Governor's designee shall include all of the following:

(a) Overall direction, pursuant to the policies established by the state council of the statewide programs operated by service delivery areas under this division.

(b) Administration, either directly or by contract with another entity, of these statewide programs in service delivery areas that request the state to assume this function.

(c) Administration of special assistance programs to areas facing urgent employment and training needs that cross jurisdictional lines or result from major plant closures under Chapter 7.5 (commencing with Section 15075), arrival and resettlement of significant numbers of refugees, or comparable circumstances. Nothing in this section shall be construed as modifying the manner in which federal Office of Refugee Resettlement Funds are used in this state.

(d) The Employment Development Department shall be responsible for the administration of demonstration programs testing innovative approaches to assisting clients eligible under this division to find unsubsidized employment, where feasible.

To the extent feasible, in implementing demonstration programs designed for eventual merger into the statewide programs operated by the administrative entity in service delivery areas under this division, the Employment Development Department shall involve appropriate local agencies in program planning and operation within the demonstration sites. Once the demonstration programs are completed, if they have proven to be effective in achieving the intent and objectives of this division, the Employment Development Department shall take the steps necessary to ensure their implementation and integration wherever appropriate within the statewide employment and training programs operated by the administrative entity in the service delivery areas.

SEC. 19. Section 15055 of the Unemployment Insurance Code is amended to read:

15055. The department shall develop standards in accordance with federal laws whereby the performance of programs in the service delivery area can be measured. The department shall provide each service delivery area with these performance standards in order that local private industry councils can assess program achievements of the service delivery area. The standards shall:

(a) Recognize that performance may vary among the service delivery areas due to economic conditions and to the employability barriers confronting their eligible populations.

(b) Be based on participant outcome measures that are related to the services provided, including obtaining unsubsidized employment, tenure of employment, adequacy of wages received, comparisons of wages before and after training, and other measures as the department may determine appropriate.

(c) Be able to measure the avoidance of costs that would have occurred had the employment and training services not been provided in comparison with the costs of providing these services.

(d) Accommodate delays in job placement following completion

of training services due to illness or other circumstances, including pregnancy.

SEC. 20. Section 15061 of the Unemployment Insurance Code is amended to read:

15061. (a) The department shall develop and maintain those fiscal control, accounting, auditing, and debt collection procedures that are necessary to assure proper disbursal of and accounting for the state and federal funds appropriated for the purposes and requirements of this division.

(b) If the state or a service delivery area has established a final debt against a Job Training Partnership Act service provider and the service provider has not paid the final debt or has not established a payment plan agreed to by the department within 60 days after the debt is established as final, the service provider shall be barred from receiving Job Training Partnership Act funds in the future from either the state or from any service delivery area. The department shall publish a list of service providers who are barred from receiving Job Training Partnership Act funds by May 1 of each year.

SEC. 21. Section 15063 of the Unemployment Insurance Code is repealed.

SEC. 22. Section 15064 of the Unemployment Insurance Code is amended to read:

15064. The department, in cooperation with the State Department of Social Services, shall report to the Legislature, not later than February 1 of each year, on the effectiveness of the program established under this division, including Dislocated Workers Assistance programs provided by Chapter 7.5. The department's report shall detail any economic and other advantages to the people of this state which have resulted from the program including the effect upon state costs, the reduction in public assistance and unemployment insurance costs, increased revenues in the form of taxes paid by program participants, and the degree to which local job training plans and program performance meet regional and state labor market needs.

SEC. 23. Section 15077.5 of the Unemployment Insurance Code is amended to read:

15077.5. To assure rapid response assistance to dislocated workers and their communities, there shall be in the Employment Development Department a State Dislocated Worker Unit, which shall do all of the following:

(a) Provide a special statewide program of assistance for displaced workers, consistent with the requirements for local programs under this chapter. This program shall be available to address sudden or severe economic dislocation under any of the following circumstances:

(1) A community, through its private industry council, board of supervisors, or other applicable local elected officials, requests or accepts state services.

(2) The private industry council or substate grantee does not

respond within 30 days after notification by the Employment Development Department of a plant closure or mass layoff, or if the Employment Development Department determines that the plan does not sufficiently meet the needs of displaced workers.

(3) Where a plant closure or substantial reduction in employment at a worksite affects workers residing in more than one service delivery area, and there is no coordinated plan among affected areas.

(b) Work with employers and labor organizations in promoting labor-management cooperation to achieve the goals of this chapter, in accordance with policies established by the state council.

(c) Be the designated state agency for purposes of receiving the 60-day notification required by the federal Worker Adjustment and Retraining Notification Act, Public Law 100-379.

(d) Provide for rapid onsite response, pursuant to local plans described in Section 15076, to permanent closures and substantial layoffs throughout the state to assess the need for, and initially provide, appropriate services to dislocated workers.

(e) Provide immediate information to local entities about state and federal programs, including economic development assistance, which can serve displaced workers, their families, and communities.

(f) Assist in the coordination of programs provided under Title III of the Job Training Partnership Act, as amended, with programs and services provided by state and local education and training agencies, public assistance agencies, the Employment Development Department, rehabilitation agencies, economic development agencies, and other entities which carry out activities pertinent to successful positive adjustment on the part of displaced workers and their families and communities.

(g) Prepare a plan, to be included in the coordination and special services plan required by Chapter 4.5 (commencing with Section 10510) of Part 1 of Division 3, to assure rapid and effective state response to local entities requesting assistance in developing programs for displaced workers, which shall be submitted for approval to the State Job Training Coordinating Council for inclusion in the plan required by Section 10525. The plan shall include specific procedures for enabling private industry councils, entities administering job training plans for displaced workers under the federal Job Training Partnership Act, as amended, workers, firms, and communities to access each of the federal and state resources appropriate for serving displaced workers. The plan shall facilitate development and implementation of local dislocated workers assistance programs pursuant to this chapter.

(h) Report to the State Job Training Coordinating Council on the type and number of requests it receives and the results of its assistance.

(i) Seek the participation and advice of individuals representative of local government, business, and labor in fulfilling its responsibilities. The advice of those persons shall be drawn upon to assure effective assistance by the state, responsive to particular

community needs and circumstances.

SEC. 24. Section 15082 of the Unemployment Insurance Code is amended to read:

15082. Federal and state funds to be transferred to the Consolidated Work Program Fund shall include all of the following:

(a) That portion of the federal employment and training funds received by the state that is designated for the purpose of local delivery of employment and training services, except for those funds designated for employment activities under Title IV-A and IV-C of the federal Social Security Act (42 U.S.C. Sec. 601 et seq. and Sec. 630 et seq.) and the Food Stamp Act (7 U.S.C. Sec. 2011 et seq.).

(b) Reinvestment of a portion of state public assistance grant savings reasonably attributable to the operation of this program. The Governor's Budget shall annually identify the savings resulting from the prior fiscal year's program operations and recommend the portion, if any, to be applied toward program funding during the budget year.

(c) Federal funds received by the state pursuant to Sections 202 (c) (1) and 262 (c) (1) and Title III of the federal Job Training Partnership Act. However, these funds shall be allocated pursuant to subdivision (e) of Section 15037 and Section 15078.

SEC. 25. Section 16002 of the Unemployment Insurance Code is amended to read:

16002. It is the intent of the Legislature that services and activities undertaken pursuant to this chapter shall be provided pursuant to Section 204 (d) of Title II of the federal Job Training Partnership Act of 1982 (Public Law 97-300), as amended. Title IIA of the Job Training Partnership Act requires that 5 percent of the state's allotment under that subpart be made available for employment training of older individuals. These programs are to be developed through the State Job Training Coordinating Council in conjunction with private industry councils, in service delivery areas designated within the state in accordance with the federal act, and are to be designed to assure the training and placement of older individuals, aged 55 and above, who are determined to be eligible in accordance with Section 204 (d) (5) of the Job Training Partnership Act in employment opportunities with private business concerns. Provisions for carrying out this responsibility include the following:

(a) Following consultation with appropriate private industry councils and chief elected officials, the State Job Training Coordinating Council shall recommend to the Governor agreements with public agencies, nonprofit private organizations, and private business concerns.

(b) Consideration is to be given to assisting programs involving training for jobs in growth industries and jobs reflecting the use of new technological skills.

CHAPTER 732

An act to add Section 785.1 to the Public Utilities Code, relating to public utilities.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and cited as the California Gas Policy Act Amendments of 1993.

SEC. 2. The Legislature finds and declares all of the following:

(a) California natural gas provides important benefits to California's economic well-being. Every cubic foot of gas produced in this state generates benefits by attracting investment capital, providing jobs, and generating local and state tax revenues.

(b) The regulatory agencies of the State of California should ensure that natural gas produced in this state is not placed at an unfair economic disadvantage relative to gas from sources outside of the state as the result of any transportation tariffs or conditions of service.

(c) Therefore, it is the policy of this state that every gas corporation shall exercise good faith and fair dealing in the administration and performance of any contract under which the gas corporation purchases or otherwise acquires natural gas produced in this state.

SEC. 3. Section 785.1 is added to the Public Utilities Code, to read:

785.1. (a) The commission shall require, after a hearing, every gas corporation to revise its transportation tariffs and conditions of service to eliminate all components that assess shippers of gas produced in California for the costs of interstate transmission of gas produced outside of this state. These revisions shall eliminate direct or indirect charges for the interstate transportation of gas produced outside of this state, commonly referred to as "double demand" charges.

(b) The commission shall consider and approve tariffs consistent with subdivision (a) on or before October 1, 1994.

(c) Nothing in this section shall be construed to prohibit the commission from approving intrastate transmission tariffs which include interstate transition cost surcharges, as described in commission decisions 91-11-025 and 92-07-025, in an appropriate manner.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty

for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 733

An act to add Chapter 1 (commencing with Section 42000) to Part 3 of Division 30 of, to add Section 42145.5 to, to repeal Section 42010, and to repeal Chapter 3 (commencing with Section 42140) of Part 3 of Division 30 of, the Public Resources Code, relating to solid waste.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 3 (commencing with Section 42140) of Part 3 of Division 30 of the Public Resources Code is repealed.

SEC. 2. Chapter 1 (commencing with Section 42000) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 1. MARKET DEVELOPMENT PROGRAMS

Article 1. General Provisions

42000. The Legislature hereby finds and declares as follows:

(a) This division requires cities and counties to divert 25 percent of all solid waste from landfills and transformation facilities by 1995 and 50 percent by 2000. As of 1990, the overall diversion rate in the state was 12 percent.

(b) California's recycling and composting efforts need to increase greatly if local jurisdictions are to meet the 25 percent and the 50 percent diversion requirements.

(c) Market development is the key to increased, cost-effective recycling. Market development includes activities that strengthen demand by manufacturers and end-use consumers for recyclable materials collected by municipalities, nonprofit organizations, and private entities.

(d) Developing markets for recyclable materials creates opportunities that will reindustrialize California. The board estimates that the development of markets for recyclable materials may create over 20,000 jobs in California's manufacturing sector, an additional 25,000 jobs in the sorting and processing fields, and an unestimated number of jobs in other fields that may develop through full implementation of this division.

(e) This division requires the board, in preparing its annual report

pursuant to Section 40507, to review its market development strategies and to make recommendations for administrative and legislative actions that will promote expansion of those markets.

(f) The board is authorized to conduct individual market development activities, but is not presently required to implement a comprehensive plan that addresses the full range of market development needs.

42001. The Legislature further finds and declares that the health, safety, and welfare of the people of California depend upon the development, stability, and expansion of domestic markets for the postconsumer wastes and secondary wastes collected within the state. It is therefore the purpose of this chapter to stimulate the use of postconsumer waste materials and secondary waste materials generated in California as raw materials used as feedstock by private business, industry, and commerce.

42002. The following definitions govern the construction of this chapter:

(a) "Applicant" means a person, as defined in Section 40170, who applies for designation as a Recycling Market Development Zone.

(b) "Postconsumer waste material" means any product generated by a business or a consumer which has served its intended end use, and which has been separated from solid waste for the purposes of collection, recycling, and disposal and which does not include secondary wasted material.

(c) "Recycling market development zone" or "zone" means any single or joint, contiguous parcels of property that, based on the determination of the board, meets the following criteria:

(1) The area has been zoned an appropriate land use for the development of commercial, industrial, or manufacturing purposes.

(2) The area is identified in the countywide or regional agency integrated waste management plan as part of the market development area.

(3) The area is located in a city with an existing postconsumer waste collection infrastructure.

(4) The area may be used to establish commercial, manufacturing, or industrial processes which would produce end products that consist of not less than 50 percent recycled materials.

(d) "Secondary waste material" means industrial byproducts which would otherwise go to disposal facilities and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes, such as home scrap and mill broke.

(e) "Subaccount" means the Recycling Market Development Revolving Loan Subaccount created pursuant to paragraph (1) of subdivision (c) of Section 42010.

Article 2. Market Development Plan

42005. (a) The board shall develop a comprehensive market development plan using existing resources, that will stimulate market demand in the state for postconsumer waste material and secondary waste material generated in the state.

(b) The board's market development plan shall include, but shall not be limited to, achieving all of the following goals:

(1) Increasing market demand for postconsumer waste materials and secondary waste materials available due to California's source reduction and recycling programs.

(2) Increasing demand for recycled content products, especially high quality, value-added products.

(3) Promoting efficient local waste diversion systems which yield high quality, industrially usable feedstocks.

(4) Promoting the competitive collection and use of secondary waste materials.

42006. (a) The plan required by Section 42005 shall describe and prioritize actions that should be undertaken to meet the goals specified in subdivision (b) of Section 42005.

(b) The plan shall include provisions for periodic review and revision in response to changing market factors or actual changes in secondary waste materials markets.

42007. Upon adoption of the plan required by Section 42005, the board shall conduct a detailed analysis of staff resources and consider how to most effectively implement the plan in consideration of existing statutory mandates and resource constraints.

42008. The board shall report on its progress in developing and implementing the market development plan to the Legislature pursuant to Section 40507.

42009. Nothing in this chapter shall be construed to infringe upon regulations relating to civil rights, equal employment rights, equal opportunity rights, or fair housing rights of any person or any environmental protection or public health law.

Article 3. Market Development Zone Program

42010. (a) The local governing body may, either by ordinance or resolution, upon the recommendation of the appropriate land use planning agency, propose eligible parcels of property within its jurisdiction as a recycling market development zone.

(b) The proposal of a recycling market development zone shall be based upon the following findings by the local governing body:

(1) The current waste management practices and conditions are favorable to the development of postconsumer waste material markets.

(2) The designation as a recycling market development zone is necessary in order to assist in attracting private sector recycling investments to the area.

(c) (1) The Recycling Market Development Revolving Loan Subaccount is hereby created in the Integrated Waste Management Account in the Integrated Waste Management Fund.

(2) Upon appropriation by the Legislature in the annual Budget Act, the board may make low-interest loans to local governing bodies and private business entities within a recycling market development zone from money in the subaccount for the purpose of assisting the board and local agencies in complying with Section 40051 and to assist cities and counties in complying with Section 41780.

(3) The board shall establish and collect fees for applications for loans authorized by this section. The application fee shall be set at a level that is sufficient to fund the board's cost of processing applications for loans. In addition, the board shall establish a schedule of fees, or points, for loans which are entered into by the board, to fund the board's administration of the revolving loan program. The revenue from the fees shall be deposited in the subaccount. The board may, upon appropriation by the Legislature in the annual Budget Act, use revenue in the account for the administration of the revolving loan program. In addition, the board may fund administration of the program from the Integrated Waste Management Account upon appropriation by the Legislature in the annual Budget Act. Funding for the administration of the Recycling Market Development Revolving Loan Program from the Integrated Waste Management Account shall be provided only if there are not sufficient funds in the subaccount to fully fund administration of the program.

(d) Loans made pursuant to subdivision (c) shall be subject to all of the following requirements:

(1) The terms of any approved loan shall be specified in a loan agreement between the borrower and the board. The loan agreement shall include a requirement that the failure to comply with the agreement shall result in any remaining unpaid amount of the loan, with accrued interest, being immediately due and payable. Notwithstanding any term of the agreement, any borrower of a loan that the board approves shall repay the principal amount, plus interest on the basis of the rate of return for money in the Pooled Money Investment Account. Except as provided in subdivision (g), all moneys received as repayment and interest on loans under this section shall be deposited in the subaccount.

(2) The term of any loan under this section shall be not more than 10 years.

(3) The board shall approve only those loan applications which demonstrate the applicant's ability to repay the loan. The highest priority for funding shall be given to projects which demonstrate that there is a market demand for recycling the project's type of postconsumer waste material.

(4) The board shall finance not more than one-half of the cost of any project, or not more than one million dollars ($1,000,000) for loans to any project, whichever is greater.

(5) The Department of Finance may audit the expenditure of the proceeds of any loan made pursuant to this section.

(e) Upon authorization by the Legislature in the annual Budget Act, the Controller shall transfer the sum of five million dollars ($5,000,000) from the Integrated Waste Management Account in the Integrated Waste Management Fund to the subaccount for the purpose of making loans pursuant to subdivision (c). This amount shall be a loan to the subaccount, repayable with interest to the Integrated Waste Management Account at the rate of return for money in the Pooled Money Investment Account, and shall be repaid on or before July 1, 1997.

(f) As part of the annual report which the board is required to submit on or before March 31, 1996, to the Legislature pursuant to Section 40507, the board shall submit a report on the loan program provided for in subdivision (c).

(g) This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed. Notwithstanding this section, any loan outstanding on July 1, 1997, shall be repaid as provided in paragraph (2) of subdivision (d) until repaid in full. Any unexpended funds in the subaccount on July 1, 1997, shall be transferred to the Integrated Waste Management Account, and any proceeds from loans outstanding on that date shall be deposited in the Integrated Waste Management Account.

42011. Any parcel of property designated as a recycling market development zone shall retain this designation for 10 years.

42012. The local governing body, or any person through the local governing body, may apply to the board for designation as a recycling market development zone.

42013. The board shall adopt regulations and guidelines concerning the necessary contents of each application for designation and, in the countywide integrated waste management plans, shall determine the maximum number of recycling market development zones to be designated pursuant to this chapter.

42014. The board may designate or redesignate recycling market development zones for persons applying for that designation.

42015. If there are more applications for designation than the number of recycling market development zones to be designated, the board shall select the applicants who shall receive the designation of a recycling market development zone based on a comparison of the applications submitted and an indication that the applicant's proposals include effective, innovative, and comprehensive tax incentives and regulatory incentives, and other incentives programs, to attract private sector investment in the proposed recycling market development zone.

42016. For the purpose of Section 42015, "regulatory incentives" include, but are not limited to, all of the following:

(a) The suspension or relaxation of locally originated or modified

building codes, zoning laws, and general plans.

(b) The elimination or reduction of fees for applications, permits, and local government services, and the establishment of a streamlined local permit process.

42017. For purposes of Section 42015, "tax incentives" include, but are not limited to, the elimination or reduction of construction taxes or business license taxes.

42018. For purposes of Section 42015, "other incentives" may include, but are not limited to, all of the following:

(a) The provision for expansion of infrastructure.

(b) Provisions for increased amounts of recyclable feedstock.

42019. In evaluating an application for the designation of a recycling market development zone, the board shall consider the amount of landfill capacity remaining in the jurisdiction where the zone would be located.

42020. In evaluating an application for the designation of a recycling market development zone, the board shall not deny the application solely because of technical deficiencies. The board shall provide applicants with an opportunity to correct technical deficiencies. An application shall be denied if technical deficiencies are not corrected within 14 days.

42021. Nothing in this chapter prohibits an applicant from seeking designation of an enterprise zone by the Department of Commerce and receiving economic incentives as defined in Section 7073 of the Government Code.

42022. In evaluating an application for designation of a recycling market development zone, the board shall consult with the Department of Commerce.

42023. Nothing in this section shall be interpreted to limit the authority of local governments to make land use decisions within their jurisdiction.

SEC. 3. Section 42145.5 is added to the Public Resources Code, to read:

42145.5. (a) Notwithstanding any other provision of law, the board may sell any of its loans made pursuant to this division on the secondary market and may pool its loans. All proceeds shall be deposited into the same accounts into which the loan repayments from each loan would have been deposited, and the use of the proceeds shall be limited to the authorized uses of these accounts.

(b) The board shall not sell its loans pursuant to this section if the loan sale results in more than a 25 percent discount of the principal amount, excluding any expenses or reserves required as a condition of the loan sale.

CHAPTER 734

An act to amend Section 6307 of the Water Code, relating to water.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 6307 of the Water Code is amended to read:

6307. (a) An annual fee shall be paid on or before December 31, 1970, and on or before December 31 of each succeeding year, based upon the height of the dam, including all enlargements thereto, substantially completed by or in operation on June 30, 1970, and on June 30 each succeeding year. The annual fee shall be one hundred twenty-five dollars ($125) plus twelve dollars ($12) per foot of height of the dam, and shall be increased pursuant to the following schedule:

Calendar Year	Fee Per Dam	Fee Per Foot of Height
1993	$150	$16
1995	$175	$20
1997	$200	$24

(b) For purposes of this section, height of the dam means the vertical distance, to the nearest foot, from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the department, or from the lowest elevation of the outside limit of the barrier, as determined by the department, if it is not across a stream channel or watercourse, to the maximum possible water storage elevation.

(c) Notwithstanding subdivision (a), the department shall limit the total annual fee per dam to not more than seventy-five dollars ($75) if both of the following apply:

(1) The dam has a storage capacity of not more than 100 acre-feet.

(2) The governing body of a private school or the governing board of a public school certifies that the dam is used as a subject of study by its students.

CHAPTER 735

An act to amend Sections 1358, 1358.2, 1384, and 1399 of the Health and Safety Code, relating to health care service plans.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1358 of the Health and Safety Code is amended to read:

1358. Every health care service plan that offers any contract that primarily or solely supplements medicare, or is advertised or represented as a supplement to medicare, shall, in addition to complying with this chapter and rules of the commissioner, comply with this article. This article shall not apply to a contract or other arrangement of a health care service plan that offers benefits under Section 1395*l* or Section 1395mm of Title 42 of the United States Code or under a demonstration project authorized pursuant to amendments to the federal Social Security Act. This article shall not apply to a contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

As used in this chapter, "Medicare" means the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, Title 1, Part 1 of Public Law 89-97, enacted by the 89th United States Congress; as then constituted or as later amended.

SEC. 2. Section 1358.2 of the Health and Safety Code is amended to read:

1358.2. (a) The disclosure form required pursuant to Section 1363 and applicable regulations, if it relates to a contract that primarily or solely supplements Medicare, with hospital or medical coverage shall also set forth the following information in the format indicated:

(1) With the information required by paragraph (1) of subdivision (b) of Section 1300.63 of Title 10 of the California Code of Regulations, conspicuously identify, on the first page of the disclosure form immediately under the plan name, the disclosure form as being for the plan's Medicare supplement contract.

(2) If the Medicare supplement contract is issued on a basis not identical to that described in the disclosure form previously provided, a corrected disclosure form shall also be provided in accordance with Section 1363 when the contract is delivered and shall contain the following statement, in no less than 12-point type on the first page, immediately above the company name:

"NOTICE: Read this disclosure form carefully. It is not identical to the disclosure form previously provided and the coverage originally applied for has not been issued."

(3) The outline of coverage provided to applicants pursuant to this section shall consist of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the plan.

The cover page shall include the items, in the same order, specified in the chart set forth in paragraph (4) of subdivision (C) of Section 16 of the Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, as adopted by the National Association of Insurance Commissioners on July 30, 1991. All benefit plans "A" through "J" shall be shown on the cover page, and the plan or plans that are offered by the plan shall be prominently identified.

All possible charges for benefit plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. All possible charges shall be stated for all benefit plans that are offered to the prospective applicant. All possible charges for the prospective applicant shall be illustrated.

The disclosure pages shall be in the language and format described below in no less than 12-point type.

PREMIUM INFORMATION

[Insert plan's name] can only raise your premium if it raises the premium for all contracts like yours in this state. [If the premium is based on the increasing age of the enrollee, include information specifying when premiums will change.]

DISCLOSURES

Use this outline to compare benefits and premiums among policies.

READ YOUR POLICY VERY CAREFULLY

This is only an outline describing the most important features of your Medicare supplement plan contract. This is not the plan contract and only the actual contract provisions will control. You must read the contract itself to understand all of the rights and duties of both you and [insert the health care service plan's name].

RIGHT TO RETURN POLICY

If you find that you are not satisfied with your contract, you may return it to [insert plan's address]. If you send the contract back to us within 30 days after you receive it, we will treat the contract as

if it had never been issued and return all of your payments.

POLICY REPLACEMENT

If you are replacing other health coverage, do NOT cancel it until you have actually received your new contract and are sure you want to keep it.

NOTICE

This contract may not fully cover all of your medical costs. Neither [insert the health care service plan's name] nor its agents are connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security office or consult "The Medicare Handbook" for further details and limitations applicable to Medicare.

COMPLETE ANSWERS ARE VERY IMPORTANT

When you fill out the application for the new contract, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your contract and refuse to pay any claims if you leave out or falsify important medical information. [If the contract is guaranteed issue, this paragraph need not appear.] Review the application carefully before you sign it. Be certain that all information has been properly recorded. [The charts displaying the features of each benefit plan offered by the plan shall use the uniform format and language shown in the charts set forth in Section 16 of the Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, as adopted by the National Association of Insurance Commissioners on July 30, 1991. No more than four benefit plans may be shown on one chart. For purposes of illustration, charts for each benefit plan are set forth below. A plan may use additional benefit plan designations on these charts.]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the commissioner.]

(b) Notwithstanding Section 1300.63.2 of Title 10 of the California Code of Regulations, no plan shall combine the evidence of coverage and disclosure form into a single document relating to a contract that supplements Medicare, or is advertised or represented as a supplement to Medicare, with hospital or medical coverage.

(c) Notwithstanding this section, a plan shall not be required to comply with this section with respect to any group contract that is any of the following:

(1) A group contract with one or more employers or labor organizations, or trustees of a fund established by one or more employers or labor organizations, or combination thereof, for

employees or former employees or combination thereof or for members or former members, or combination thereof, of the labor organizations.

(2) A group contract with any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association is composed of individuals all of whom are actively engaged in the same profession, trade or occupation, has been maintained in good faith for purposes other than obtaining health coverage, and has been in existence for at least two years prior to the date of its initial offering of the contract to its members.

SEC. 3. Section 1384 of the Health and Safety Code is amended to read:

1384. (a) Within 90 days after receipt of a request from the commissioner, a plan or other person subject to this chapter shall submit to the commissioner an audit report containing audited financial statements covering the 12-calendar months next preceding the month of receipt of the request, or another period as the commissioner may require.

(b) On or before 105 days after the date of a notice of surrender or order of revocation, a plan shall file with the commissioner a closing audit report containing audited financial statements. The reporting period for the closing audit report shall be the 12-month period preceding the date of the notice of surrender or order of revocation, or for another period as the commissioner may specify. This report shall include other relevant information as specified by rule of the commissioner. The commissioner shall not consent to a surrender and an order of revocation shall not be considered final until the closing audit report has been filed with the commissioner and all concerns raised by the commissioner therefrom have been resolved by the plan, as determined by the commissioner. For good cause, the commissioner may waive the requirement of a closing audit report.

(c) Each plan shall submit financial statements prepared as of the close of its fiscal year within 120 days after the close of such fiscal year. The financial statements referred to in this subdivision and in subdivisions (a) and (b) of this section shall be accompanied by a report, certificate, or opinion of an independent certified public accountant or independent public accountant. The audits shall be conducted in accordance with generally accepted auditing standards and the rules and regulations of the commissioner. However, financial statements from public entities or political subdivisions of the state need not include a report, certificate, or opinion by an independent certified public accountant or an independent public accountant, and the audit shall be conducted in accordance with governmental auditing standards.

(d) A plan, solicitor, or solicitor firm shall make any special reports to the commissioner as the commissioner may from time to time require.

(e) For good cause and upon written request, the commissioner may extend the time for compliance with subdivisions (a), (b), and (h) of this section.

(f) A plan, solicitor, or solicitor firm shall, when requested by the commissioner, for good cause, submit its unaudited financial statement, prepared in accordance with generally accepted accounting principles and consisting of at least a balance sheet and statement of income as of the date and for the period specified by the commissioner. The commissioner may require the submission of these reports on a monthly or other periodic basis.

(g) If the report, certificate, or opinion of the independent accountant referred to in subdivision (c) is in any way qualified, the commissioner may require the plan to take any action as the commissioner deems appropriate to permit an independent accountant to remove the qualification from the report, certificate, or opinion.

(h) The commissioner may reject any financial statement, report, certificate, or opinion filed pursuant to this section by notifying the plan, solicitor, or solicitor firm required to make this filing of its rejection and the cause thereof. Within 30 days after the receipt of the notice, such person shall correct the deficiency, and the failure so to do shall be deemed a violation of this chapter. The commissioner shall retain a copy of all filings so rejected.

(i) The commissioner may make rules and regulations specifying the form and content of the reports and financial statements referred to in this section, and may require that these reports and financial statements be verified by the plan or other person subject to this chapter in a manner as the commissioner may prescribe.

SEC. 4. Section 1399 of the Health and Safety Code is amended to read:

1399. (a) Surrender of a license as a health plan becomes effective 30 days after receipt of an application to surrender the license or within a shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the surrender is instituted within 30 days after the application is filed. If this proceeding is pending or instituted, surrender becomes effective at the time and upon the conditions as the commissioner by order determines.

(b) If the commissioner finds that any plan is no longer in existence, or has ceased to do business or has failed to initiate business activity as a licensee within six months after licensure, or cannot be located after reasonable search, the commissioner may by order summarily revoke the license of the plan.

(c) The commissioner may summarily suspend or revoke the license of a plan upon (1) failure to pay any fee required by this chapter within 15 days after notice by the commissioner that the fee is due and unpaid, (2) failure to file any amendment or report required under this chapter within 15 days after notice by the

commissioner that the report is due, (3) failure to maintain any bond or insurance pursuant to Section 1376, (4) failure to maintain a deposit, insurance, or guaranty arrangement pursuant to Section 1377, or (5) failure to maintain a deposit pursuant to Section 1300.76.1 of Title 10 of the California Code of Regulations.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 736

An act to amend Section 8670.7 of the Government Code, relating to oil spills.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 8670.7 of the Government Code is amended to read:

8670.7. (a) The administrator, subject to the Governor, has the primary authority to direct prevention, removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any oil spill in the marine waters of the state, in accordance with any applicable marine facility or vessel contingency plan and the state oil spill contingency plan. The administrator shall cooperate with any federal on-scene coordinator, as specified in the National Contingency Plan.

(b) The administrator shall implement the state oil spill contingency plan, required pursuant to Section 8574.1, to the fullest extent possible.

(c) The administrator shall do all of the following:

(1) The administrator shall be present at the location of any oil spill of more than 100,000 gallons in marine waters, as soon as possible after notice of the discharge.

(2) The administrator shall ensure that persons trained in oil spill response and cleanup, whether employed by the responsible party, the state, or another private or public person or entity, are onsite to respond to, contain, and clean up any oil spill in marine waters, as soon as possible after notice of the discharge.

(d) Throughout the response and cleanup process, the administrator shall apprise the members of the State Interagency Oil Spill Committee, the air quality management district or air pollution control district having jurisdiction over the area in which the oil spill occurred, and the local government entities which are affected by the spill.

(e) The administrator, with the assistance of the State Fire Marshal, the State Lands Commission, and the federal on-scene coordinator, shall determine the cause and amount of the discharge.

(f) The administrator shall have the state authority over the use of dispersants and any oil spill cleanup agents in connection with an oil discharge, consistent with the regulations adopted pursuant to Section 13169 of the Water Code. The administrator shall consult with the federal on-scene coordinator prior to exercising authority under this subdivision.

(g) The administrator shall ensure that, as part of the response to any significant spill, biologists or other personnel are present and provided any support and funding necessary and appropriate for the assessment of damages to natural resources and for the collection of data and other evidence which may help in determining and recovering damages.

(h) (1) The administrator shall enter into a memorandum of understanding with the executive director of the State Water Resources Control Board, acting for the state board and the regional boards, and with the approval of the state board, to address discharges, other than dispersants, that are incidental to, or directly associated with, the response, containment, and cleanup of an existing or threatened oil spill conducted pursuant to this chapter.

(2) The memorandum of understanding entered into pursuant to paragraph (1) shall address any permits, requirements, or authorizations that are required for the specified discharges. The memorandum of understanding shall be consistent with requirements that protect state water quality and beneficial uses and with any applicable provisions of the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) or the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and shall expedite efficient oil spill response.

(3) The memorandum of understanding shall be completed by May 15, 1994.

CHAPTER 737

An act to amend Section 12999.5 of the Food and Agricultural Code, relating to economic poisons.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 12999.5 of the Food and Agricultural Code is amended to read:

12999.5. (a) In lieu of civil prosecution by the director, the commissioner may levy a civil penalty against a person violating Division 6 (commencing with Section 11401), Article 10 (commencing with Section 12971) or Article 10.5 (commencing with Section 12980) of this chapter, Section 12995, Article 1 (commencing with Section 14001) of Chapter 3, or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars ($1,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

(c) If the person upon whom the commissioner levied a civil penalty requested and appeared at a hearing, the person may appeal the commissioner's decision to the director within 30 days of the date of receiving a copy of the commissioner's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the director.

(2) The appellant and the commissioner may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the director, present the record of the hearing including written evidence that was submitted at the hearing and a written argument to the director stating grounds for affirming, modifying, or reversing

the commissioner's decision.

(3) The director may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the director.

(5) The director shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the director finds substantial evidence in the record to support the commissioner's decision, the director shall affirm the decision.

(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the director may affirm the commissioner's decision, modify the commissioner's decision by reducing or increasing the amount of the penalty levied so that it is within the director's guidelines for imposing civil penalties, or reverse the commissioner's decision. Any civil penalty increased by the director shall not be higher than that proposed in the commissioner's notice of proposed action given pursuant to subdivision (b). A copy of the director's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Any person who does not request a hearing pursuant to subdivision (b) may not file an appeal pursuant to this subdivision.

(9) Review of a decision of the director may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) The commissioner may levy a civil penalty pursuant to subdivisions (a) to (c), inclusive, against a person violating paragraph (1), (2), or (8) of subdivision (a) of Section 1695 of the Labor Code, which pertains to registration with the commissioner, carrying proof of that registration, and filing changes of address with the commissioner.

(e) After the exhaustion of the appeal and review procedures provided in this section, the commissioner or his or her representative, may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any decision of the director or his or her authorized representative rendered on an appeal from the commissioner's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

CHAPTER 738

An act to add and repeal Part 1.5 (commencing with Section 7000) of Division 6 of the Fish and Game Code, relating to fish, and making an appropriation therefor.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Part 1.5 (commencing with Section 7000) is added to Division 6 of the Fish and Game Code, to read:

PART 1.5. FISHERY MANAGEMENT PLANS

CHAPTER 1. LEGISLATIVE FINDINGS

7000. The Legislature finds and declares that the critical need to conserve, utilize, and manage the state's marine fish resources, held in trust by the department, warrants exploring the feasibility of developing and implementing comprehensive fishery management plans. The Legislature intends that fishery management plans utilize the best scientific information available to establish measures to conserve, restore, enhance, protect, and use fish resources and to protect the habitat upon which they depend. The objective of a fishery management plan shall be to obtain the greatest sustainable yield of a particular fish species for present and future generations. Fishery management plans may be prepared in a manner to qualify the plan as the functional equivalent of an environmental impact report pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000), P.R.C.).

CHAPTER 2. FISHERY MANAGEMENT PLAN PREPARATION

7005. (a) The department shall prepare a fishery management plan for the white sea bass fishery as a pilot program. Unless the context otherwise requires, for the purposes of this part, "plan" means fishery management plan.

(b) To the extent funds are appropriated, the department may complete additional plans for the fisheries of other high priority marine fish species, as determined by the department.

7010. A plan shall consider all beneficial uses of the fishery; contain a thorough assessment of the current status of the fishery; recommend measures for conserving, enhancing, and managing the use of the fishery; identify the principal concerns regarding fishery habitat protection; and recommend appropriate measures to protect and restore critical fishery habitat. Measures recommended in the plan shall ensure fair and equitable access to the fishery for all users.

7011. Nothing in this part shall be construed to deny access to the white sea bass fishery for purposes of commercial fishing or sportfishing.

7015. (a) The department shall seek assistance in developing a fishery management plan from various users of the fishery, an appropriate existing advisory committee, and other scientific experts from the National Marine Fisheries Service, academic institutions, and other organizations. The department shall seek advice regarding the process of preparing a plan, management objectives, standards for authorizing use of the fishery, and methods for gathering the best available scientific information regarding the fishery.

(b) The advisory committee members and scientific experts assisting the department in the preparation of the plan shall not receive compensation or reimbursement for expenses unless the department determines that a need exists to contract for those services and funds are made available for the contracts.

7020. (a) A fishery management plan shall be available to the public for review at least 45 days prior to the completion of the final draft to be submitted to the commission and the Legislature. Persons requesting to be notified of the availability of the plan shall be notified in sufficient time to allow them to review and submit comments. The department may charge a reasonable fee to cover the cost of reproducing copies of a plan.

(b) On or before June 30, 1995, a final draft of the white sea bass fishery management plan shall be completed and submitted to the commission for review and adoption and to the Legislature for review and enactment of recommended statutory changes as provided in Section 7025.

7022. The commission shall hold at least one public hearing to receive public testimony regarding a plan prior to adopting it. If the commission does not adopt a plan, the commission shall return the plan to the department for revision and resubmission.

CHAPTER 3. REGULATIONS

7025. Concurrent with the adoption of a fishery management plan by the commission, the recommended actions contained in the plan within the jurisdiction of the commission shall be adopted as regulations. However, those regulations shall not become effective until the recommendations in the plan requiring legislative enactment also take effect.

CHAPTER 4. PILOT PROGRAM REPORT

7030. Notwithstanding Section 7550.5 of the Government Code, on or before January 1, 1998, the department shall prepare and submit to the commission and the Legislature a report which evaluates the pilot program, recommends appropriate changes in the process or criteria for preparing fishery management plans, and

recommends whether a permanent system of more comprehensive scientific marine fishery management planning should be pursued by the state.

CHAPTER 739

An act to add Section 729.5 to the Public Utilities Code, relating to public utilities.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 729.5 is added to the Public Utilities Code, to read:

729.5. A public utility, other than one-way radio paging services, shall not change a group of customers from one rate schedule to another rate schedule, if the change would result in an increase of more than 10 percent in the rate charged to the affected customers, without first notifying customers of the change. Upon the request of an affected customer, the commission may hold a hearing on the change.

CHAPTER 740

An act to amend Sections 13401, 13440, 13450, and 13451 of the Business and Professions Code, relating to energy.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 13401 of the Business and Professions Code is amended to read:

13401. (a) "Sell" or any of its variants means attempt to sell, offer for sale or assist in the sale of, permit to be sold or offered for sale or delivery, offer for delivery, trade, barter, or expose for sale.

(b) "Manufacturer" means manufacturer, refiner, producer, or importer.

(c) "Petroleum products" means gasoline, diesel fuel, liquefied petroleum gas only when used as a motor fuel, kerosene, thinner, solvent, liquefied natural gas, pressure appliance fuel, or white gasoline, or any motor fuel, or any oil represented as engine lubricant, engine oil, lubricating or motor oil, or any oil used to lubricate transmissions, gears, or axles.

(d) "Barrel," when applied to petroleum products, consists of 42 gallons.

(e) "Oil" means motor oil, engine lubricant, engine oil, lubricating oil, or oils used to lubricate transmissions, gears, or axles.

(f) "Motor oil" means engine oil, engine lubricant, or lubricating oil.

(g) "Gasoline" means a volatile mixture of predominately liquid hydrocarbons which may contain oxygenates and small amounts of additives, and is suitable for use as a fuel in a spark-ignition engine.

(h) "Motor fuel" means any product intended for consumption in an internal combustion engine to produce energy.

(i) "Motor vehicle fuel" means any product intended for consumption in an internal combustion engine to produce the energy to power a self-propelled vehicle designed for transporting persons or property on a public street or highway.

(j) "Diesel fuel" means any petroleum product offered for sale which meets the standards prescribed for diesel fuel by this chapter.

(k) "Kerosene" means any petroleum product offered for sale which meets the standards prescribed for kerosene by this chapter.

(*l*) "Fuel oil" means any petroleum product offered for sale which meets the standards prescribed for fuel oil by this chapter.

(m) "Automotive spark-ignition engine fuel" means any product intended for use in a spark-ignition engine to produce energy.

(n) "Compression-ignition engine fuel" means any product intended for use in a compression-ignition engine to produce energy.

SEC. 2. Section 13440 of the Business and Professions Code is amended to read:

13440. (a) The department shall establish specifications for gasoline or automotive spark-ignition engine fuels. The department shall adopt by reference the latest standards established by a recognized consensus organization or standards writing organization such as the American Society for Testing and Materials (ASTM) or the Society of Automotive Engineers (SAE), for automotive spark-ignition engine fuels, except that no specification shall be less stringent than required by any California state law.

(b) Any gasoline blend containing methanol shall also contain an alcohol cosolvent (butanol (C_4) or higher molecular weight alcohol) in an amount equal to or greater than the volume percentage of methanol except those blends previously granted a waiver by the Environmental Protection Agency.

(c) The antiknock index as defined in Section 13403 for gasoline shall not be less than 87.

(d) Gasoline shall meet the latest specifications set forth in ASTM D-4814, except that no specification shall be less stringent than required by any California state law.

SEC. 2.5. Section 13440 of the Business and Professions Code is amended to read:

13440. (a) The department shall establish specifications for gasoline or automotive spark-ignition engine fuels. The department

shall adopt by reference the latest standards established by a recognized consensus organization or standards writing organization such as the American Society for Testing and Materials (ASTM) or the Society of Automotive Engineers (SAE), for automotive spark-ignition engine fuel, except that no specification shall be less stringent than required by any California state law.

(b) Any blend of gasoline and ethanol that complies with Section 2258 of Title 13 of the California Code of Regulations, as it reads on the effective date of the act amending this section during the 1993–94 Regular Session, or as amended, may exceed the Reid vapor pressure limits of ASTM D-4814 for the area and season in which the blend is sold at retail by not more than 6.9 kilopascals (1.0 pounds per square inch), except the total Reid vapor pressure shall not exceed 103 kilopascals (15 pounds per square inch).

(c) Any gasoline blend containing methanol shall also contain an alcohol cosolvent (butanol (C_4) or higher molecular weight alcohol) in an amount equal to or greater than the volume percentage of methanol except those blends previously granted a waiver by the Environmental Protection Agency.

(d) The antiknock index as defined in Section 13403 for gasoline shall not be less than 87.

(e) Gasoline shall meet the latest specifications set forth in ASTM D-4814, except that no specification shall be less stringent than required by any California state law.

SEC. 3. Section 13450 of the Business and Professions Code is amended to read:

13450. The department shall establish specifications for compression-ignition engine fuel, kerosene, and fuel oil. The department shall adopt by reference the latest standards established by a recognized consensus organization or standards writing organization such as the American Society for Testing and Materials (ASTM) or the Society of Automotive Engineers (SAE), for compression-ignition engine fuels, kerosene, and fuel oil, except that no specification shall be less stringent than required by any California state law.

(a) Diesel fuel shall meet the specifications set forth in ASTM D-975, except that sulfur specifications shall not exceed the maximum specified by any California state law.

(b) Kerosene shall meet the specifications set forth in ASTM D-3699.

(c) Fuel oil shall meet the specifications set forth in ASTM D-396, except that sulfur specifications shall not exceed the maximum specified by any California state law.

SEC. 4. Section 13451 of the Business and Professions Code is amended to read:

13451. It is unlawful for any person to sell or deliver to any premises for the purpose of sale, any product as or purported to be "compression-ignition engine fuel," "kerosene," or "fuel oil," unless the product conforms to the specifications of this article.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 13440 of the Business and Professions Code proposed by this bill and SB 219. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 13440 of the Business and Professions Code, and (3) this bill is enacted after SB 219, in which case Section 13440 of the Business and Professions Code, as amended by SB 219, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative, and Section 2 of this bill shall not become operative.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 741

An act to amend Section 11834.15 of, to amend and renumber Sections 11834.10, 11834.11, 11834.12, 11834.13, 11834.30, 11834.32, 11834.33, 11834.35, 11834.36, 11834.37, and 11834.38 of, to add Sections 11834.03, 11834.09, 11834.10, 11834.16, 11834.35, and 11834.40 to, to add Article 2.5 (commencing with Section 11834.26) to Chapter 7.5 of Part 2 of Division 10.5 of, to add a heading to Article 5 (commencing with Section 11834.50) of Chapter 7.5 of Part 2 of Division 10.5 of, to repeal Sections 11834.14 and 11834.19 of, and to repeal and add Section 11834.31 of, the Health and Safety Code, relating to alcohol and drug programs.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 11834.03 is added to the Health and Safety Code, immediately following Section 11834.02, to read:

11834.03. Any person or entity applying for licensure shall file with the department, on forms provided by the department, all of the following:

(a) A completed written application for licensure.

(b) A fire clearance approved by the State Fire Marshal or local fire enforcement officer.

(c) A licensure fee, established by the department in accordance

with Section 11834.15.

SEC. 2. Section 11834.09 is added to the Health and Safety Code, immediately preceding Section 11834.10, to read:

11834.09. (a) Upon receipt of a completed written application, fire clearance, and licensing fee from the prospective licensee, and subject to the department's review and determination that the prospective licensee can comply with this chapter and regulations adopted pursuant to this chapter, the department may issue a single license to the following types of alcoholism or drug abuse recovery or treatment facilities:

(1) A residential facility.

(2) A facility wherein separate buildings or portions of a residential facility are integral components of a single alcoholism or drug abuse recovery or treatment facility and all of the components of the facility are managed by the same licensee.

(b) Failure to submit a completed written application, fire clearance, and payment of the required licensing fee in a timely manner shall result in termination of the department's licensure review and shall require submission of a new application by the prospective licensee.

(c) Failure of the prospective licensee to demonstrate the ability to comply with this chapter or the regulations adopted pursuant to this chapter shall result in departmental denial of the prospective licensee's application for licensure.

SEC. 3. Section 11834.10 of the Health and Safety Code is amended and renumbered to read:

11834.01. The department has the sole authority in state government to license adult alcoholism or drug abuse recovery or treatment facilities.

(a) In administering this chapter, the department shall issue new licenses for a period of two years to those programs that meet the criteria for licensure set forth in Section 11834.03.

(b) Onsite program visits for compliance shall be conducted at least once during the license period.

(c) The department may conduct announced or unannounced site visits to facilities licensed pursuant to this chapter for the purpose of reviewing for compliance with all applicable statutes and regulations.

SEC. 4. Section 11834.10 is added to the Health and Safety Code, to read:

11834.10. A licensee shall not operate an alcoholism or drug abuse recovery or treatment facility beyond the conditions and limitations specified on the license.

SEC. 5. Section 11834.11 of the Health and Safety Code is amended and renumbered to read:

11834.02. (a) As used in this chapter, "alcoholism or drug abuse recovery or treatment facility" or "facility" means any premises, place, or building that provides 24-hour residential nonmedical services to adults who are recovering from problems related to

alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services.

(b) As used in this chapter, "adults" may include, but is not limited to, all of the following:

(1) Mothers over 18 years of age and their children.

(2) Emancipated minors, which may include, but is not limited to, mothers under 18 years of age and their children.

(c) As used in this chapter, "emancipated minors" means persons under 18 years of age who have acquired emancipation status pursuant to Section 7002 of the Family Code.

(d) Notwithstanding subdivision (a), an alcoholism or drug abuse recovery or treatment facility may serve adolescents upon the issuance of a waiver granted by the department pursuant to regulations adopted under subdivision (c) of Section 11834.50.

SEC. 6. Section 11834.12 of the Health and Safety Code is amended and renumbered to read:

11834.30. No person, firm, partnership, association, corporation, or local governmental entity shall operate, establish, manage, conduct, or maintain an alcoholism or drug abuse recovery or treatment facility to provide recovery, treatment, or detoxification services within this state without first obtaining a current valid license issued pursuant to this chapter.

SEC. 7. Section 11834.13 of the Health and Safety Code is amended and renumbered to read:

11834.50. The department shall adopt regulations to implement this chapter in accordance with the purposes required by Section 11835. These regulations shall be adopted only after consultation with appropriate groups affected by the proposed regulations. The regulations shall include, but not be limited to, all of the following:

(a) Provision for a formal appeal process for the denial, suspension, or revocation of a license.

(b) Establishment of requirements for compliance, procedures for issuance of deficiency notices and civil penalties for noncompliance.

(c) Provision for the issuance of a waiver for an alcoholism or drug abuse recovery or treatment facility to serve not more than three adolescents, or 10 percent of the total licensed capacity, whichever is less, age 14 years and older, when a need exists and services specific to adolescents are otherwise unavailable. The regulations shall specify the procedures and criteria for granting the waiver. The procedures shall include, but not be limited to, criminal record reviews and fingerprinting.

(d) Establishment of the elements and minimum requirements for recovery, treatment, and detoxification services.

(e) Provision for an expedited process for reviewing an application for licensure when a license is terminated pursuant to subdivision (c) of Section 11834.40.

SEC. 8. Section 11834.14 of the Health and Safety Code is

repealed.

SEC. 9. Section 11834.15 of the Health and Safety Code is amended to read:

11834.15. (a) The department shall calculate and establish the fee for initial licensure and for extension of the period of licensure. The nonrefundable licensing fee shall be calculated every two years in an amount sufficient to cover the department's cost in administering the licensure under this chapter for other than nonprofit organizations and local governmental entities. No fee shall be levied for licensure of nonprofit organizations or local governmental entities.

(b) The department may assess civil penalties in accordance with Sections 11834.31 and 11834.34.

SEC. 10. Section 11834.16 is added to the Health and Safety Code, to read:

11834.16. A license shall be valid for a period of two years from the date of issuance. The department may extend the licensure period for subsequent two-year periods upon submission by the licensee of a completed written application for extension and payment of the required licensing fee prior to the expiration date shown on the license. Failure to submit to the department the required written application for extension of the licensing period, or failure to submit to the department the required licensing fee prior to the expiration date on the license, shall result in the automatic expiration of the license at the end of the two-year licensing period.

SEC. 11. Section 11834.19 of the Health and Safety Code is repealed.

SEC. 12. Article 2.5 (commencing with Section 11834.26) is added to Chapter 7.5 of Part 2 of Division 10.5 of the Health and Safety Code, to read:

Article 2.5. Requirements for Licensees

11834.26. (a) The licensee shall provide at least one of the following nonmedical services:

(1) Recovery services.

(2) Treatment services.

(3) Detoxification services.

(b) The department shall adopt regulations requiring records and procedures that are appropriate for each of the services specified in subdivision (a). The records and procedures may include all of the following:

(1) Admission criteria.

(2) Intake process.

(3) Assessments.

(4) Recovery, treatment, or detoxification planning.

(5) Referral.

(6) Documentation of provision of recovery, treatment or detoxification services.

(7) Discharge and continuing care planning.

(8) Indicators of recovery, treatment, or detoxification outcomes.

(c) In the development of regulations implementing this section, the written record requirements shall be modified or adapted for social model programs.

11834.27. (a) The department shall have the sole authority in state government to establish the appropriate minimum qualifications of the licensee or designated administrator, and the staff of a provider of any of the services specified in subdivision (a) of Section 11834.26. These qualifications may include, but not be limited to, education, skills, life experience, and training.

(b) Nothing in this section shall be construed to apply to credentialing or licensing of individuals or to certification qualifications established pursuant to Chapter 7 (commencing with Section 11833).

11834.29. Any licensee that provides recovery, treatment, or detoxification services, that is not in compliance with the requirements of this article, shall have one year from the effective date of the regulations adopted by the department pursuant to this article and pursuant to Article 5 (commencing with Section 11834.50) to comply. In the event that the licensee fails to comply, the department shall take action against the licensee pursuant to Article 4 (commencing with Section 11834.36).

SEC. 13. Section 11834.30 of the Health and Safety Code is amended and renumbered to read:

11834.32. (a) The director may bring an action to enjoin the violation of Section 11834.30 in the superior court in and for the county in which the violation occurred. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or loss.

(b) With respect to any and all actions brought pursuant to this section alleging actual violation of Section 11834.30, the court shall, if it finds the allegations to be true, issue its order enjoining the alcoholism or drug abuse recovery or treatment facility from continuance of the violation.

SEC. 14. Section 11834.31 of the Health and Safety Code is repealed.

SEC. 15. Section 11834.31 is added to the Health and Safety Code, to read:

11834.31. If a facility is alleged to be in violation of Section 11834.30, the department shall conduct a site visit to investigate the allegation. If the department's employee or agent finds evidence that the facility is providing alcoholism or drug abuse recovery, treatment, or detoxification services without a license, the employee or agent shall take the following actions:

(a) Submit the findings of the investigation to the department.

(b) Upon departmental authorization, issue a written notice to the facility stating that the facility is operating in violation of Section 11834.30. The notice shall include all of the following:

(1) The date by which the facility shall cease providing services.

(2) Notice that the department will assess against the facility a civil penalty of two hundred dollars ($200) per day for every day the facility continues to provide services beyond the date specified in the notice.

(3) Notice that the case will be referred for civil proceedings pursuant to Section 11834.32 in the event the facility continues to provide services beyond the date specified in the notice.

(c) Inform the facility of the licensing requirements of this chapter.

SEC. 16. Section 11834.32 of the Health and Safety Code is amended and renumbered to read:

11834.34. (a) In addition to the penalties of suspension or revocation of a license issued under this chapter, the department may also levy a civil penalty for violation of this chapter or the regulations adopted pursuant to this chapter.

(1) The amount of the civil penalty shall not be less than twenty-five dollars ($25) or more than fifty dollars ($50) per day for each violation, except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment, or both, as determined by the department. Except for penalties assessed pursuant to Section 11834.31, in no event shall a civil penalty assessment exceed one hundred fifty dollars ($150) per day.

(2) Any licensee that is cited for repeating the same violation within 24 months of the first violation is subject to an immediate civil penalty of one hundred fifty dollars ($150) and fifty dollars ($50) for each day the violation continues until the deficiency is corrected.

(3) Any licensee that has been assessed a civil penalty pursuant to paragraph (2) that repeats the same violation within 24 months of the violation subject to paragraph (2) is subject to an immediate civil penalty of one hundred fifty dollars ($150) for each day the violation continues until the deficiency is corrected.

(b) Prior to the assessment of any civil penalty, the department shall provide the licensee with notice requiring the licensee to correct the deficiency within the period of time specified in the notice.

SEC. 17. Section 11834.33 of the Health and Safety Code is amended and renumbered to read:

11834.45. The civil and administrative remedies available to the department pursuant to this chapter are not exclusive, and may be sought and employed in any combination deemed advisable by the department to enforce this chapter.

SEC. 18. Section 11834.35 of the Health and Safety Code is amended and renumbered to read:

11834.36. (a) The director may suspend or revoke any license

issued under this chapter, or deny an application for licensure, for extension of the licensing period, or to modify the terms and conditions of a license, upon any of the following grounds and in the manner provided in this chapter:

(1) Violation by the licensee of any provision of this chapter or regulations adopted pursuant to this chapter.

(2) Repeated violation by the licensee of any of the provisions of this chapter or regulations adopted pursuant to this chapter.

(3) Aiding, abetting, or permitting the violation of, or any repeated violation of, any of the provisions described in paragraph (1) or (2).

(4) Conduct in the operation of an alcoholism or drug abuse recovery or treatment facility that is inimical to the health, morals, welfare, or safety of either an individual in, or receiving services from, the facility or to the people of the State of California.

(5) Misrepresentation of any material fact in obtaining the alcoholism or drug abuse recovery or treatment facility license.

(6) Failure to pay any civil penalties assessed by the department.

(b) The director may temporarily suspend any license prior to any hearing when, in the opinion of the director, the action is necessary to protect residents of the alcoholism or drug abuse recovery or treatment facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall notify the licensee of the temporary suspension and the effective date of the temporary suspension and at the same time shall serve the provider with an accusation. Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for hearing, and the hearing shall be held as soon as possible. The temporary suspension shall remain in effect until the time the hearing is completed and the director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the department receives the proposed decision from the Office of Administrative Hearings.

SEC. 19. Section 11834.35 is added to the Health and Safety Code, to read:

11834.35. Any employee or agent of the department upon presentation of proper identification, may enter and inspect any building, premises, and records, at a reasonable time, with or without notice, to secure information regarding compliance with, or to prevent a violation of, this chapter or any regulation adopted pursuant to this chapter. Failure of the owner or operator of the building or premises to allow the employee or agent of the department to enter and inspect the building, premises, and records, shall result in the department taking legal action to gain entry by an inspection warrant issued pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. The cost of any legal action required to gain entry to a licensed facility shall

be borne by the owner or operator responsible for preventing the department from entering and inspecting the building, premises, and records.

SEC. 20. Section 11834.36 of the Health and Safety Code is amended and renumbered to read:

11834.37. (a) Proceedings for the suspension, revocation, or denial of a license under this chapter shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted by those provisions. In the event of conflict between this chapter and the Government Code, the Government Code shall prevail.

(b) In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by the preponderance of the evidence.

(c) The department shall commence and process licensure revocations under this chapter in a timely and expeditious manner. Notwithstanding Section 11502.1 of the Government Code, the Office of Administrative Hearings shall give priority calendar preference to licensure revocation hearings pursuant to this chapter, particularly revocations where the health and safety of the residents are in question.

SEC. 21. Section 11834.37 of the Health and Safety Code is amended and renumbered to read:

11834.38. Any license suspended pursuant to this chapter may be reinstated pursuant to Section 11522 of the Government Code.

SEC. 22. Section 11834.38 of the Health and Safety Code is amended and renumbered to read:

11834.39. (a) The withdrawal of an application for a license after it has been filed with the department shall not, unless the department consents in writing to the withdrawal, deprive the department of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any of these grounds.

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by the department, or its suspension, forfeiture, or cancellation by order of the department or by order of a court of law, or its surrender without the written consent of the department, shall not deprive the department of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any ground provided by law.

SEC. 23. Section 11834.40 is added to the Health and Safety Code, to read:

11834.40. A license shall terminate by operation of law, prior to its expiration date, when any of the following conditions occur:

(a) The licensee sells or otherwise transfers the facility or the

property of the facility as identified on the license, unless the transfer of ownership applies to the transfer of stock when the facility is owned by and licensed as a corporation, and when the transfer of stock does not constitute a majority change in ownership.

(b) The licensee surrenders the license to the department.

(c) The licensee moves the facility identified on the license from one location to another. The department shall develop regulations to provide for an expedited application and licensing process for a newly located facility.

(d) The licensee is a sole proprietor and the licensee dies.

(e) The licensee actually or constructively abandons the licensed facility. Constructive abandonment includes insolvency, eviction, or seizure of assets or equipment resulting in the failure to provide recovery, treatment, or detoxification services to residents.

SEC. 24. A heading is added to Article 5 (commencing with Section 11834.50) of Chapter 7.5 of Part 2 of Division 10.5 of the Health and Safety Code, to read:

Article 5. Regulations

CHAPTER 742

An act to add and repeal Section 744.7 of the Public Utilities Code, relating to public utilities.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 744.7 is added to the Public Utilities Code, to read:

744.7. (a) The commission shall have the authority to allow utilities to develop programs for cooperative activities between utilities and commercial, industrial, institutional, and governmental customers that have the purpose and effect of reducing the energy bills or regulating the energy quality to those customers. The programs may include any of the following:

(1) Direct utility investment in equipment on the customers' premises to achieve reductions or increased efficiencies in energy use or to regulate energy quality.

(2) Financial assistance for the design, construction, installation, acquisition, or fixed operations and maintenance of customer facility modifications or expansions that achieve reductions or increased efficiencies in energy use or to regulate energy quality.

(3) Engineering, training in advanced facility operation and management techniques, and other consulting services to achieve

reductions or efficiencies in energy use or to regulate energy quality.

(b) The commission shall allow utilities to recover in rates the reasonable costs of these programs to the extent the utility incurring those costs demonstrates that the ratepayers of the utility are likely to derive long-term benefits, including, but not limited to, utility system benefits and economic benefits generated by economic development, business retention, expansion, recruitment, and relocation activities associated with increased efficiencies in energy use and improved energy quality for the commercial, industrial, institutional, and governmental customers of the utility.

(c) This section may apply both to customers of electric and gas utilities. However, prior to the application of this section to reductions in usage or increases in efficiency of the use of natural gas for transportation-only customers of natural gas utilities specified in paragraph (2) of subdivision (a), the commission shall first determine that cost-effective energy efficiency programs for transportation-only users of natural gas can be developed which meet the criteria set forth in subdivision (b).

(d) Utilities carrying out programs authorized by this section shall utilize the services of nonutility providers of energy efficiency services and equipment for a preponderance of work to be performed.

(e) It is the intention of the Legislature that in reviewing and supervising programs authorized by this section, and in establishing the level of direct and indirect general ratepayer support to be used in these programs the commission shall pursue the public benefits of these programs consistent with the policies expressed in Chapter 984 of the Statutes of 1983. The Legislature further intends that the commission shall, in determining whether and to what extent direct and indirect general ratepayer support may be used in these programs, exercise its regulatory and supervisory powers to promote a competitive marketplace for energy efficiency equipment and services. The commission's findings concerning general ratepayer support of those programs, and its determination that those programs are consistent with the policies expressed in Chapter 984, shall be determinative of those issues unless found to be arbitrary and capricious. However, nothing in this subdivision is intended to affect any litigation commenced prior to July 1, 1993. Nothing in this section shall prevent the commission from utilizing a competitive bidding process for all or any part of the work to be performed under these programs.

(f) In authorizing this program, the commission shall implement a selective audit and review program that shall critically evaluate the actual performance of this program, as related to the proposed benefits. The audit and review shall include specific findings on whether in implementing this program, California utilities have achieved significant acceleration of cost-effective energy efficiency improvements and substantial expansion of the markets served by nonutility providers of energy efficiency services. Conclusions of this

program review shall also include, but not be limited to, the issue of competition with small business, licensed contractors, as well as the effect on ratepayers. Recommendations for program improvement and continuation shall be included in the report to the Legislature and the Governor. An interim report shall be completed by the commission and made available to the Legislature, Governor, and interested parties no later than December 1, 1996. A final report shall be completed by the commission and made available to the interested parties no later than July 1, 1998. The commission shall hold a public hearing on the final report. The final report shall be adopted by the commission and made available to the Legislature, Governor, and interested parties no later than October 1, 1998.

(g) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 743

An act to add Section 44276.1 to the Education Code, relating to teacher credentialing.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 44276.1 is added to the Education Code, to read:

44276.1. (a) The Legislature finds and declares the following:

(1) The education mission of schools may be thwarted when school campuses are not safe, secure, and peaceful.

(2) Effective school management can improve school safety and decrease violence and criminal behavior.

(3) In many school districts and neighborhoods, violence and criminal behavior are increasingly frequent.

(4) Teachers and other educators who are well prepared in principles of school safety may be able to mitigate to some degree the detrimental behavior of pupils and others on school campuses.

Therefore, it is the intent of the Legislature that the Commission on Teacher Credentialing adopt standards that address the principles of school safety in the preparation of future classroom teachers, school administrators, school counselors, and other pupil personnel service providers as a condition for licensing these prospective practitioners.

(b) Standards adopted by the commission pursuant to paragraph (3) of subdivision (b) of Section 44259, and pursuant to Sections 44266, 44270, 44277, and 44372, shall include the effective preparation of prospective classroom teachers, school administrators, school counselors, and other pupil personnel service providers in principles of school safety. In developing these standards, the commission shall consider, but is not limited to considering, the following principles of school safety:

(1) School management skills that emphasize crisis intervention and conflict resolution.

(2) Developing and maintaining a positive and safe school climate, including methods to prevent the possession of weapons on school campuses.

(3) Developing school safety plans.

(4) Developing ways to identify and defuse situations that may lead to conflict or violence.

(c) In developing standards relating to school safety, the commission shall consider the findings and recommendations of the advisory panel of experts on school violence established pursuant to Section 44276.5.

(d) The commission shall allow an institution of postsecondary education to meet the standards developed by the commission relating to school safety by incorporating the principles of school safety in the program required by paragraph (3) of subdivision (b) of Section 44259.

(e) Implementation of subdivision (b) of this section as it applies to paragraph (3) of subdivision (b) of Section 44259 shall occur in conjunction with the review of requirements for earning and renewing multiple and single subject teaching credentials, as required by Section 44259.2.

(f) Effective January 1, 1996, instruction in principles of school safety shall be required of all candidates for credentials specified in Sections 44259, 44266, and 44270.

(g) A credential that was issued prior to the effective date of this section shall remain in force as long as it is valid under the laws and regulations that were in effect on the date it was issued. The commission may not, by regulation, invalidate an otherwise valid credential unless it issues to the holder of the credential, in substitution, a new credential authorized by another provision in this chapter that is no less restrictive than the credential for which it was substituted with respect to the kind of service authorized and the grades, classes, or types of schools in which it authorizes service.

(h) Notwithstanding this section, persons who were performing

teaching, administrative, counseling, or other pupil personnel services as of January 1, 1994, pursuant to the language of this chapter that was in effect prior to that date, may continue to perform those services without complying with any requirements added by the amendments adding this section.

(i) The commission shall grant credentials based on the requirements for those credentials as of December 31, 1993, to candidates who, prior to the effective date of the commission's adoption of standards pursuant to this section, were in the process of meeting those credential requirements.

CHAPTER 744

An act to add Section 1371.3 to the Health and Safety Code, to amend Sections 10133, 10133.7, and 10350.9 of, and to add Section 11512.186 to, the Insurance Code, to amend Sections 22001, 22003, 22005, 22006, 22011, and 22013 of, and to repeal Section 22012 of, the Welfare and Institutions Code, and to amend Section 37 of Chapter 1132 of the Statutes of 1992, relating to health insurance.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1371.3 is added to the Health and Safety Code, to read:

1371.3. On and after January 1, 1994, every group health care service plan that provides hospital, medical, or surgical expense benefits for plan members and their dependents shall authorize and permit assignment of the enrollee's or subscriber's right to any reimbursement for health care services covered under the plan contract to the State Department of Health Services when health care services are provided to a Medi-Cal beneficiary. This section, however, shall not apply to a Medi-Cal beneficiary for health care services provided pursuant to a contract with the State Department of Health Services under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code.

SEC. 2. Section 10133 of the Insurance Code is amended to read:

10133. (a) Upon written consent of the insured first obtained with respect to a particular claim, any disability insurer shall pay group insurance benefits contingent upon, or for expenses incurred on account of, hospitalization or medical or surgical aid to the person or persons furnishing the hospitalization or medical or surgical aid, or, on and after January 1, 1994, to the person or persons having paid for the hospitalization or medical or surgical aid, but the amount of any such payment shall not exceed the amount of benefit provided

by the policy with respect to the service or billing of the provider of aid, and the amount of the payments pursuant to one or more assignments shall not exceed the amount of expenses incurred on account of the hospitalization or medical or surgical aid. Payments so made shall discharge the insurer's obligation with respect to the amount so paid.

(b) Nothing in this section shall be construed to authorize an insurer to furnish or directly provide services of hospitals, or psychiatric health facilities, as defined in Section 1250.2 of the Health and Safety Code, or physicians and surgeons, or psychologists or in any manner to direct, participate in, or control the selection of the hospital or health facility or physician and surgeon or psychologist from whom the insured secures services or exercise medical or dental or psychological professional judgment, except that an insurer may negotiate and enter into contracts for alternative rates of payment with institutional providers, and offer the benefit of these alternative rates to insureds who select those providers.

(c) Alternatively, insurers may, by agreement with group policyholders, limit payments under a policy to services secured by insureds from institutional providers, and after July 1, 1983, from professional providers, charging alternative rates pursuant to contract with the insurer.

(d) Pursuant to subdivision (c), when alternate rates of payment to providers are applicable to contracts with group policyholders, the contracts shall include programs for the continuous review of the quality of care, performance of medical or psychological personnel included in the plan, utilization of services and facilities, and costs, by professionally recognized unrelated third parties utilizing in the case of professional providers similarly licensed providers for each medical, psychological, or dental service covered under the plan and utilizing in the case of institutional providers appropriate professional providers. All provisions of the laws of the state relating to immunity from liability and discovery privileges for medical, psychological, and dental peer review shall apply to the licensed providers performing the foregoing activities.

(e) On or after July 1, 1983, the amendments made to this section during the 1982 portion of the 1981–82 Regular Session, shall also be applicable with respect to both professional and institutional providers.

SEC. 2.5. Section 10133.7 is added to the Insurance Code, to read:

10133.7. (a) On and after January 1, 1994, any disability insurer shall pay group insurance benefits contingent upon, or for expenses incurred on account of, hospitalization or medical or surgical aid to the person or persons having provided or having paid for the hospitalization or medical or surgical aid where that person has qualified for reimbursement by submitting the items and information specified in subdivisions (b) and (c). The amount of any such payment shall not exceed the amount of benefit provided by the policy with respect to the service or billing of the provider of aid, and

the amount of payments shall not exceed the amount of expenses incurred on account of the hospitalization or medical or surgical aid. Payment so made shall discharge the insurer's obligation with respect to the amount so paid.

(b) The items which shall be submitted to the insurer for reimbursement pursuant to subdivision (a) are as follows:

(1) Proof of payment of medical services and a provider's itemized bill for service.

(2) In the case where the insured does not reside with the person or persons seeking hospitalization or medical or surgical aid, either a copy of the judicial order requiring the insured to provide dependent coverage or a state approved form verifying the existence of a judicial order to be filed with the insurer on an annual basis.

(3) In the case where the insured does not reside with the person or persons seeking hospitalization or medical or surgical aid, and the provider is seeking direct reimbursement, an itemized bill with the signature of the custodial parent or guardian certifying that services being billed for have been provided and, on an annual basis, either a copy of the judicial order requiring the insured to provide dependent coverage or a state approved form verifying the existence of a judicial order.

(c) When seeking payment from an insurer, a person shall provide an insurer the items specified in subdivision (b) with the name and address of the person to be reimbursed, the name and policy number of the insured, the name of the individual for whom hospitalization or medical or surgical aid has been provided, and other necessary information directly related to coverage under the policy.

(d) In the case of a Medi-Cal beneficiary, where the State Department of Health Services has paid for the hospitalization or medical or surgical aid, any disability insurer shall pay group insurance benefits to the State Department of Health Services for expenses contingent upon, or incurred on account of hospitalization or medical or surgical aid. Payment so made shall discharge the insurer's obligation with respect to the amount so paid. The amount of any such payment shall not exceed the amount of benefit provided by the policy with respect to the service or billing of the provider of aid, and the amount of payments shall not exceed the amount of expenses incurred on account of hospitalization or medical or surgical aid.

SEC. 2.6. Section 10350.9 of the Insurance Code is amended to read:

10350.9. A disability policy shall contain a provision which shall include the following first paragraph and which may, at the option of the insurer, include either or both of the following second and third paragraphs. If the provision contains the second paragraph, there shall be inserted in the blank an amount which shall not exceed one thousand dollars ($1,000).

Payment of Claims: Indemnity for loss of life will be payable in

accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding $_____, to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of that loss, be paid directly to the person or persons having paid for the hospitalization or medical or surgical aid, or to the hospital or person rendering those services; but it is not required that the service be rendered by a particular hospital or person.

SEC. 3. Section 11512.186 is added to the Insurance Code, to read:

11512.186. (a) Upon written consent of the insured first obtained with respect to a particular claim, every group nonprofit hospital plan shall pay group insurance benefits contingent upon, or for expenses incurred on account of, hospitalization or medical or surgical aid to the person or persons furnishing the hospitalization or medical or surgical aid, to the custodial parent (defined as the parent or person having custody of an insured dependent child), or, in the case of a Medi-Cal beneficiary, to the State Department of Health Services, but the amount of any such payment shall not exceed the amount of benefit provided by the policy with respect to the service or billing of the provider of aid, and the amount of the payments pursuant to one or more assignments shall not exceed the amount of expenses incurred on account of the hospitalization or medical or surgical aid. Payments so made shall discharge the insurer's obligation with respect to the amount so paid.

(b) Nothing is this section shall be construed to authorize an insurer to furnish or directly provide services of hospitals, or psychiatric health facilities, as defined in Section 1250.2 of the Health and Safety Code, or physicians and surgeons or psychologists or in any manner to direct, participate in, or control the selection of the hospital or health facility or physician and surgeon or psychologist from whom the insured secures services or exercise medical or dental or psychological professional judgment, except that an insurer

may negotiate and enter into contracts for alternative rates of payment with institutional providers, and offer the benefit of these alternative rates to insureds who select those providers.

(c) Alternatively, insurers may, by agreement with group policyholders, limit payments under a policy to services secured by insureds from institutional providers, and from professional providers, charging alternative rates pursuant to contract with the insurer.

(d) Pursuant to subdivision (c), when alternative rates of payment to providers are applicable to contracts with group policyholders, the contracts shall include programs for the continuous review of the quality of care, performance of medical or psychological personnel included in the plan, utilization of services and facilities, and costs, by professionally recognized unrelated third parties utilizing in the case of professional providers similarly licensed providers for each medical, psychological, or dental service covered under the plan and utilizing in the case of institutional providers appropriate professional providers. All provisions of the laws of the state relating to immunity from liability and discovery privileges for medical, psychological, and dental peer review shall apply to the licensed providers performing the foregoing activities.

SEC. 4. Section 22001 of the Welfare and Institutions Code is amended to read:

22001. The purpose of the pilot program is to link private long-term care insurance and health care service plan contracts which cover long-term care with the In-Home Supportive Services program (Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9) and Medi-Cal, and to provide specified in-home supportive services benefits and specified Medi-Cal benefits to the purchasers of certified insurance policies and health care service plan contracts who qualify under the special provisions of this division.

SEC. 5. Section 22003 of the Welfare and Institutions Code is amended to read:

22003. (a) Individuals who participate in the pilot program and have resources above the eligibility levels for receipt of medical assistance under Title XIX of the Social Security Act (Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code) shall be eligible to receive those in-home supportive services benefits specified by the State Department of Social Services, and those Medi-Cal benefits specified by the State Department of Health Services, for which they would otherwise be eligible, if, prior to becoming eligible for benefits, they have purchased a long-term care insurance policy or a health care service plan contract covering long-term care that has been certified by the State Department of Health Services pursuant to Section 22005.

(b) Individuals may purchase certified long-term care insurance policies or health care service plan contracts which cover long-term care services in amounts equal to the resources they wish to protect,

so long as the amount of insurance purchased exceeds the minimum level set by the program.

(c) The resource protection provided by this division shall be effective only for long-term care policies, and health care service plan contracts that cover long-term care services, when the policy or contract is delivered, issued for delivery, or renewed during an enrollment period of July 1, 1993, to June 30, 1998, inclusive, or before the termination of the pilot program, whichever is sooner.

SEC. 6. Section 22005 of the Welfare and Institutions Code is amended to read:

22005. The department shall only certify long-term care insurance policies and health care service plan contracts which cover long-term care that provide all of the following:

(a) Individual case management by a coordinating entity designated or approved by the department.

(b) The levels and durations of benefits which meet minimum standards set by the department.

(c) Protection against loss of benefits due to inflation.

(d) A recordkeeping system including an explanation of benefit report on insurance payments or benefits which count toward Medi-Cal resource exclusion.

(e) Approval of the insurance policy by the Department of Insurance as meeting the requirements of Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code, excepting the requirements of Sections 10232.1 and 10232.8, or approval of the health care service plan contract by the Department of Corporations pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code as providing substantially equivalent coverage to that required by Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code.

(f) Compliance with any other requirements imposed by the department through regulations consistent with the purposes of this division.

SEC. 7. Section 22006 of the Welfare and Institutions Code is amended to read:

22006. The State Department of Health Services, in determining eligibility for Medi-Cal and the State Department of Social Services, in determining eligibility for in-home supportive services, shall exclude resources up to, or equal to, the amount of benefit payments made by certified long-term care insurance policies or health care service plan contracts which cover long-term care services to the extent that the benefits paid are for:

(a) These in-home supportive services benefits specified in regulations by the State Department of Social Services and those services that Medi-Cal approves or benefits that Medi-Cal provides as specified in regulations by the State Department of Health Services pursuant to Section 22009.

(b) Services delivered to insured individuals in a community

setting as part of an individual assessment and case management program provided by coordinating entities designated or approved by the departments.

(c) Services the insured individual receives after meeting the disability criteria for eligibility for long-term care benefits established by the departments.

SEC. 8. Section 22011 of the Welfare and Institutions Code is amended to read:

22011. The Director of Health Services shall annually report to the Legislature regarding the progress of the pilot program. The report shall be provided to the Legislature by January 1 of each year, commencing with 1994. The report shall include:

(a) The success in implementing the public and private partnership.

(b) The number and type of insurers and health care service plans with policies or contracts certified by the department.

(c) The number, age, and financial circumstances of participants in the pilot program who have purchased certified long-term care insurance policies and health care service plan contracts which cover long-term care services.

(d) The number of individuals seeking consumer information services and advice from the Department of Aging pursuant to Section 22008.

(e) The number of participants actually receiving long-term care services, or the Medi-Cal and in-home supportive services benefits provided for by the program, and the type of benefits paid under certified policies and health care service plan contracts which cover long-term care that could count toward Medi-Cal resources protection.

(f) Estimates of the impact on present and future Medi-Cal expenditures.

(g) The cost effectiveness of the program.

(h) A recommendation regarding the continuation of the program.

SEC. 9. Section 22012 of the Welfare and Institutions Code is repealed.

Section 22013 of the Welfare and Institutions Code is amended to read:

22013. (a) In implementing this division, the State Department of Health Services may contract, on a bid or nonbid basis, with any qualified individual, organization, or entity for services needed to implement the pilot project, and may negotiate contracts, on a nonbid basis, with long-term care insurers, health care service plans, or both, for the provision of coverage for long-term care services that will meet the certification requirements set forth in Section 22005 and the other requirements of this division.

(b) In order to achieve maximum cost savings, the Legislature declares that an expedited process for issuing contracts pursuant to this division is necessary. Therefore, contracts entered into on a

nonbid basis pursuant to this section shall be exempt from the requirements of Chapter 1 (commencing with Section 10100) and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

SEC. 11. Section 37 of Chapter 1132 of the Statutes of 1992 is amended to read:

Sec. 37. The changes made by Chapter 1132 of the Statutes of 1992, to Sections 10232.1 and 10232.8 of Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code in this bill shall not apply to the California Partnership for Long-Term Care established by Division 12 (commencing with Section 22000) of the Welfare and Institutions Code.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 745

An act to amend Section 1218 of the Code of Civil Procedure, and to amend Section 5241 of the Family Code, relating to support.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1218 of the Code of Civil Procedure is amended to read:

1218. (a) Upon the answer and evidence taken, the court or judge must determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he or she is guilty of the contempt, a fine may be imposed on him or her not exceeding one thousand dollars ($1,000), or he or she may be imprisoned not exceeding five days, or both.

(b) No party, who is in contempt of a court order or judgment in a dissolution of marriage or legal separation action, shall be permitted to enforce such an order or judgment, by way of execution or otherwise, either in the same action or by way of a separate action, against the other party. This restriction shall not affect nor apply to the enforcement of child or spousal support orders.

(c) In any court action in which a party is found in contempt of

court for failure to comply with a court order pursuant to the Family Code, or Sections 11350 to 11476.1, inclusive, of the Welfare and Institutions Code, the court shall order the following:

(1) Upon a first finding of contempt, the court shall order the contemnor to perform community service of up to 120 hours, in lieu of, or in addition to, imprisonment of up to 120 hours, for each count of contempt.

(2) Upon the second finding of contempt, the court shall order the contemnor to perform community service of up to 120 hours, in addition to ordering imprisonment of the contemnor up to 120 hours or the payment of a fine of up to one thousand dollars ($1,000), or both such imprisonment and fine, for each count of contempt.

(3) Upon the third or any subsequent finding of contempt, the court shall order both of the following:

(A) The court shall order the contemnor to serve a term of imprisonment of up to 240 hours, and to pay a fine of one thousand dollars ($1,000) or perform community service of up to 240 hours, or both such fine and community service, for each count of contempt.

(B) The court shall order the contemnor to pay an administrative fee, not to exceed the actual cost of the contemnor's administration and supervision, while assigned to a community service program pursuant to this paragraph.

SEC. 2. Section 5241 of the Family Code is amended to read:

5241. (a) An employer who willfully fails to withhold and forward support pursuant to a currently valid assignment order entered and served upon the employer pursuant to this chapter is liable to the obligee for the amount of support not withheld, forwarded, or otherwise paid to the obligee.

(b) In addition to any other penalty or liability provided by law, willful failure by an employer to comply with an assignment order is punishable as contempt, pursuant to Section 1218 of the Code of Civil Procedure.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 746

An act to amend Section 1218 of the Code of Civil Procedure, relating to contempt.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 1218 of the Code of Civil Procedure is amended to read:

1218. (a) Upon the answer and evidence taken, the court or judge must determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he or she is guilty of the contempt, a fine may be imposed on him or her not exceeding one thousand dollars ($1,000), or he or she may be imprisoned not exceeding five days, or both.

(b) No party, who is in contempt of a court order or judgment in a dissolution of marriage or legal separation action, shall be permitted to enforce such an order or judgment, by way of execution or otherwise, either in the same action or by way of a separate action, against the other party. This restriction shall not affect nor apply to the enforcement of child or spousal support orders.

(c) In any court action in which a party is found in contempt of court for failure to comply with a court order pursuant to the Family Code, or Sections 11350 to 11476.1, inclusive, of the Welfare and Institutions Code, the court shall order the following:

(1) Upon a first finding of contempt, the court shall order the contemner to perform community service of up to 120 hours, in lieu of imprisonment of up to 120 hours, for each count of contempt.

(2) Upon the second finding of contempt, the court shall order the contemner to perform community service of up to 120 hours, in addition to ordering imprisonment of the contemner up to 120 hours or the payment of a fine of up to one thousand dollars ($1,000), or both such imprisonment and fine, for each count of contempt.

(3) Upon the third or any subsequent finding of contempt, the court shall order both of the following:

(A) The court shall order the contemner to serve a term of imprisonment of up to 240 hours, and to pay a fine of one thousand dollars ($1,000) or perform community service of up to 240 hours, or both such fine and community service, for each count of contempt.

(B) The court shall order the contemner to pay an administrative fee, not to exceed the actual cost of the contemner's administration and supervision, while assigned to a community service program pursuant to this paragraph.

(4) The court shall take parties' employment schedules into consideration when ordering either community service or imprisonment, or both.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 747

An act to amend Sections 704, 704.1, 705, 708, 708.5, 984, 1088, 1088.5, 1110, 2627, 2627.3, 2627.5, 2627.7, 2653, and 13021 of, and to add Sections 704.2 and 984.5 to, the Unemployment Insurance Code, relating to unemployment compensation.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 704 of the Unemployment Insurance Code is amended to read:

704. The director shall not approve an election under Section 701, 702, 702.1, 702.5, 703, 708, or 708.5 if he or she finds that any of the following conditions exist:

(a) The self-employed individual is currently unable to perform his or her regular and customary work due to injury or illness.

(b) The employing unit or self-employed individual is not normally and continuously engaged in a regular trade, business, or occupation.

(c) The employing unit or self-employed individual intends to discontinue the regular trade, business or occupation within eight calendar quarters.

(d) The regular trade, business, or occupation of the employing unit or self-employed individual is seasonal in its operations.

(e) The major portion of the self-employed individual's remuneration is not derived from his or her trade, business, or occupation.

(f) The self-employed individual is unable to provide a copy of his or her Internal Revenue Service Schedule SE as reported on or before April 15 of the preceding year showing a net profit of at least four thousand six hundred dollars ($4,600) or to certify to an average net profit of at least one thousand one hundred fifty dollars ($1,150) per quarter since becoming self-employed or for the preceding four quarters, whichever period is less.

(g) The employing unit or self-employed individual has failed to make a return or to pay contributions within the time required by this division and there is an unpaid amount of contributions owing by the employing unit or self-employed individual.

(h) (1) A prior elective coverage agreement entered into pursuant to Section 708 or 708.5 has been terminated by the department under Section 704.1 or by means of a written application for termination as required by this division, and the individual has not completed a waiting period of 18 consecutive months from the date of termination.

(2) The waiting period for reinstatement to the elective coverage program may be waived for any individual who becomes eligible for coverage after being terminated under paragraph (1), (2), (4), or (5) of subdivision (a) of Section 704.1, upon receipt by the department of an application for coverage to be effective the first day of the quarter in which the application is received.

(i) The employing unit or any officer or agent of or person having charge of the affairs of the employing unit, or the self-employed individual has been convicted within the preceding eight consecutive calendar quarters of any violation under Chapter 10 (commencing with Section 2101). For the purposes of this subdivision, a plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction irrespective of whether an order granting probation or other order is made suspending the imposition of the sentence or whether sentence is imposed but execution thereof is suspended.

SEC. 2. Section 704.1 of the Unemployment Insurance Code is amended to read:

704.1. (a) Notwithstanding any other provision of this division, the director may terminate any elective coverage agreement under this article if he or she finds that any of the following conditions exist:

(1) The employing unit or self-employed individual is not normally and continuously engaged in a regular trade, business, or occupation.

(2) The employing unit or self-employed individual has discontinued the regular trade, business, or occupation.

(3) The regular trade, business, or occupation of the employing unit or self-employed individual is seasonal in its operations.

This paragraph shall not apply to any public entity.

(4) The major portion of the self-employed individual's remuneration is not derived from his or her trade, business, or occupation.

(5) The self-employed individual reports a net profit of less than four thousand six hundred dollars ($4,600) on his or her Internal Revenue Service Schedule SE for a third consecutive year.

(6) The employing unit or self-employed individual has failed to make a return or to pay contributions within the time required by this division and there is an unpaid amount of contributions owing by the employing unit or self-employed individual, except when the

elective coverage agreement has been in effect for less than two complete calendar years.

(7) The employing unit or self-employed individual, or a representative thereof, is found by the director to have filed a false statement in order to be considered eligible for elective coverage.

(8) The employing unit or any officer or agent of or person having charge of the affairs of the employing unit, or the self-employed individual is convicted of any violation pursuant to Chapter 10 (commencing with Section 2101). For the purposes of this paragraph, a plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction irrespective of whether an order granting probation or other order is made suspending the imposition of the sentence or whether sentence is imposed but execution thereof is suspended.

(b) The director shall give to the employing unit, or to the self-employed individual, a written notice pursuant to Section 1206 of the director's termination of the elective coverage agreement under this section. The date of termination may be the end of the calendar quarter immediately preceding the existence of any condition specified in subdivision (a), or the end of any subsequent calendar quarter thereafter, as determined by the director.

Any termination of elective coverage shall not affect the liability of the employing unit or self-employed individual for any contributions due, owing, and unpaid to the department.

(c) Sections 1222, 1223, and 1224 shall apply to matters arising under this section.

SEC. 3. Section 704.2 is added to the Unemployment Insurance Code, to read:

704.2. For purposes of Sections 704 and 704.1:

(a) "Normally and continuously engaged in a regular trade, business, or occupation" means both of the following:

(1) Regularly performing services and engaging in an uninterrupted pattern of work that is customary for the individual's trade, business, or occupation.

(2) In the case of a self-employed individual or individual who is an employer is in a trade, business, or occupation that requires a valid and active license, that individual has been issued that license. An individual operating a business without a required license shall not be considered normally engaged in a trade, business, or occupation.

(b) "Seasonal in its operations" means any of the following:

(1) The trade, business, or occupation is not continuous or carried on throughout the year.

(2) The operation of the trade, business, or occupation is temporarily or intermittently suspended for regularly recurring periods of time.

(3) The performance of services in the trade, business, or occupation is regularly suspended due to weather, climate, or other conditions.

SEC. 4. Section 705 of the Unemployment Insurance Code is

amended to read:

705. (a) An elective coverage agreement approved by the director pursuant to any section of this article may be terminated as of January 1st of any calendar year only if the agreement has been in effect for two calendar years and if the employing unit or self-employed individual, on or before the 31st day of January of that year, has filed with the director a written application for termination.

(b) An elective coverage agreement entered into prior to January 1, 1994, pursuant to Section 708 or 708.5 may be terminated on January 1, 1994, if the self-employed individual files a written application for termination with the director on or before June 30, 1994.

SEC. 5. Section 708 of the Unemployment Insurance Code is amended to read:

708. (a) Any individual who is an employer under this division or any two or more individuals who have so qualified may file with the director a written election that their services shall be deemed to be services performed by individuals in employment for an employer for all the purposes of this division. Upon the approval of the election by the director the services of those individuals shall be deemed to constitute employment for an employer for all the purposes of this division. Regardless of their actual earnings, for the purposes of computing benefit rights and contributions under this division, they shall be deemed to have received the following remuneration for each calendar quarter:

(1) For purposes of unemployment insurance, the highest amount of wages required to be entitled to the maximum benefit amount provided in Section 1280.

(2) For purposes of disability insurance, the highest amount of wages required to be entitled to the maximum benefit amount provided in Section 2655.

(A) For disability insurance contributions on or after July 1, 1994, the quarterly contribution shall be the product of one-fourth of the amount of net profit, but not less than one thousand one hundred fifty dollars ($1,150) except when subparagraph (B) applies, reported on or before April 15 of the preceding year as declared on the Internal Revenue Service Schedule SE filed by an individual who is an employer under this division and the contribution rate established pursuant to Section 984, except as provided by Section 985. On January 1, 1995, quarterly income credits for the period from July 1, 1993, to June 30, 1994, inclusive, shall be changed to one-fourth of the amount of the net profit or four thousand six hundred dollars ($4,600), whichever is greater, reported on or before April 15, 1993, as declared on the Internal Revenue Service Schedule SE for the 1992 taxable year filed by each individual having an elective coverage agreement in effect for that period or any portion thereof. If no Internal Revenue Service Schedule SE was filed, the individual shall be assigned a quarterly income credit of one thousand one hundred fifty dollars ($1,150). Quarterly income credits for this

period shall not exceed seven thousand nine hundred forty-two dollars ($7,942). If any quarterly income credit for the period from July 1, 1993, to June 30, 1994, inclusive, was reduced prior to January 1, 1995, the amended income credit shall be reduced proportionately. Benefits payable for periods of disability commencing on or after January 1, 1995, shall be based on Section 2655. For purposes of this division, income credits shall be included in the term "wages."

(B) The self-employed individual shall not pay contributions for periods of any disability, including periods for which some services are performed while disabled. The self-employed individual shall file a quarterly report of wages and certify as to the period of disability in order to maintain eligibility for elective disability insurance coverage and benefits. During periods of disability, the self-employed individual shall reduce his or her quarterly contributions by dividing the quarterly contribution amount by 91 to compute the daily contribution amount, and the daily contribution amount shall be multiplied by the number of days disabled to compute the amount by which the quarterly contributions shall be reduced. The department shall reduce income credits utilizing the same calculation method.

(b) Any individual who is an employer under this division or any two or more individuals who have so qualified may file with the director a written election that their services shall be deemed to be services performed by individuals in employment for an employer for the purposes of Part 2 (commencing with Section 2601) only. Upon the approval of the election by the director the services of those individuals shall be deemed to constitute employment for an employer for the purposes of Part 2 (commencing with Section 2601) only. Regardless of their actual earnings, for the purposes of computing disability benefit rights and worker contributions, they shall be deemed to have received remuneration for each calendar quarter the highest amount of wages required to be entitled to the maximum benefit award provided in Section 2655. For contributions on or after July 1, 1994, the quarterly contribution shall be the product of one-fourth of the amount of net profit, but not less than one thousand one hundred fifty dollars ($1,150), except when subparagraph (B) of paragraph (2) of subdivision (a) applies, reported on or before April 15 of the preceding year as declared on the Internal Revenue Service Schedule SE filed by an individual who is an employer under this division and the contribution rate established pursuant to Section 984, except as provided by Section 985. The quarterly contribution shall be reduced as set forth in subparagraph (B) of paragraph (2) of subdivision (a) if a disability occurred during the quarter for which payment is being made. On January 1, 1995, quarterly income credits for the period from July 1, 1993, to June 30, 1994, inclusive, shall be changed to one-fourth of the amount of the net profit or four thousand six hundred dollars ($4,600), whichever is greater, reported on or before April 15, 1993, as declared on the Internal Revenue Service Schedule SE for the

1992 taxable year filed by each individual having an elective coverage agreement in effect for that period or any portion thereof. If no Internal Revenue Service Schedule SE was filed, the individual shall be assigned a quarterly income credit of one thousand one hundred fifty dollars ($1,150). Quarterly income credits for this period shall not exceed seven thousand nine hundred forty-two dollars ($7,942). If quarterly income credits were reduced prior to January 1, 1995, the amended income credits shall be reduced proportionately. Benefits payable for periods of disability commencing on or after January 1, 1995, shall be based on Section 2655. For purposes of this division, income credits shall be included in the term "wages."

(c) (1) Any individual applying for or continuing elective coverage under this section shall be requested to sign an annual statement authorizing the department to verify the net profit declared on his or her Internal Revenue Service Schedule SE. Failure of the individual to sign a statement authorizing the department to verify income shall result in the individual being assigned an annual income level of four thousand six hundred dollars ($4,600) for contribution and benefit purposes.

(2) Any individual applying for elective coverage shall submit a copy of his or her Internal Revenue Service Schedule SE filed on or before April 15 of the preceding year with his or her application for elective coverage in order to establish first-year contributions and benefits in excess of the minimum required to qualify for elective coverage.

(d) Any self-employed individual continuing elective coverage who fails to file an Internal Revenue Service Schedule SE by April 15 of each calendar year is required to remit contributions based upon the last year the self-employed individual filed an Internal Revenue Service Schedule SE.

(e) Any self-employed individual who has not yet filed an Internal Revenue Service Schedule SE shall be assigned an annual income level of four thousand six hundred dollars ($4,600) for contribution and benefit purposes.

(f) Contributions required under this division are payable on and after the date stated in the approval of the director. The director may levy assessments under this division for any amount due when an elective coverage agreement has been in effect for less than two complete calendar years. Chapter 7 (commencing with Section 1701), relating to the collection of amount due, shall apply to this section.

(g) No benefits shall be paid to any individual based upon remuneration deemed to have been received pursuant to this section unless all contributions due with respect to all remuneration deemed to have been received by such individual pursuant to this section have been paid to the department.

(h) No benefits shall be paid to any individual based on elective coverage income credits in his or her base period if his or her elective

coverage agreement has been terminated under paragraph (6) of subdivision (a) of Section 704.1.

(i) Notwithstanding subdivision (b) of Section 2627 and Sections 2627.3, 2627.5, and 2627.7, no benefits shall be paid to any individual covered under this section, with respect to periods of disability commencing on or after January 1, 1994, until he or she has been unemployed and disabled for a waiting period of seven consecutive days during each disability benefit period.

(j) Notwithstanding Section 2653, with respect to periods of disability commencing on or after January 1, 1994, the maximum amount of benefits payable to an individual covered under this section during any one disability benefit period shall be 39 times his or her weekly benefit amount, but in no case shall the total amount of benefits payable be more than the total wages credited to the individual during his or her disability base period. If the benefit is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

SEC. 6. Section 708.5 of the Unemployment Insurance Code is amended to read:

708.5. (a) Any individual who is self-employed, who is not an employer as defined in any provision of Article 3 (commencing with Section 675), of Chapter 3 of this part, and who receives the major part of his or her remuneration from the trade, business, or occupation in which he or she is self-employed, may file with the director a written election that his or her services in connection with his or her trade, business, or occupation shall be deemed to be services performed by an individual in employment for an employer for the purposes of Part 2 (commencing with Section 2601) only. Upon the approval of the election by the director, the services of that self-employed individual in connection with his or her trade, business, or occupation shall be deemed to constitute employment for an employer for the purposes of Part 2 only of this division. Regardless of his or her actual earnings, for the purpose of computing disability benefit rights and worker contributions, he or she shall be deemed to have received remuneration for each calendar quarter the highest amount of wages required to be entitled to the maximum benefit award provided in Section 2655. For contributions on or after July 1, 1994, the quarterly contribution shall be the product of one-fourth of the amount of net profit, but not less than one thousand one hundred fifty dollars ($1,150), except when subparagraph (B) of paragraph (2) of subdivision (a) of Section 708 applies, reported on or before April 15 of the preceding year as declared on the Internal Revenue Service Schedule SE filed by an individual who is an employer under this division and the contribution rate established pursuant to Section 984, except as provided by Section 985. The quarterly contribution shall be reduced as set forth in subparagraph (B) of paragraph (2) of subdivision (a) of Section 708 if a disability occurred during the quarter for which payment is being made. On January 1, 1995, quarterly income credits for the period from July 1,

1993, to June 30, 1994, inclusive, shall be changed to one-fourth of the net profit or four thousand six hundred dollars ($4,600), whichever is greater, reported on or before April 15, 1993, as declared on the Internal Revenue Service Schedule SE for the 1992 taxable year filed by each individual having an elective coverage agreement in effect for that period or any portion thereof. If no Internal Revenue Service Schedule SE was filed, the individual shall be assigned a quarterly income credit of one thousand one hundred fifty dollars ($1,150). Quarterly income credits for this period shall not exceed seven thousand nine hundred forty-two dollars ($7,942). If quarterly income credits for the period from July 1, 1993, to June 30, 1994, inclusive, were reduced prior to January 1, 1995, the amended income credits shall be reduced proportionately. Benefits payable for periods of disability commencing on or after January 1, 1995, shall be based on the provisions of Section 2655. For purposes of this division, income credits shall be included in the term "wages."

(b) (1) Any individual applying for or continuing elective coverage under this section shall be requested to sign an annual statement authorizing the department to verify the net profit declared on his or her Internal Revenue Service Schedule SE. Failure of the individual to sign a statement authorizing the department to verify income shall result in the individual being assigned an annual income level of four thousand six hundred dollars ($4,600) for contribution and benefit purposes.

(2) Any individual applying for elective coverage shall submit a copy of his or her Internal Revenue Service Schedule SE filed on or before April 15 of the preceding year with his or her application for elective coverage in order to establish first-year contributions and benefits in excess of the minimum required to qualify for elective coverage.

(c) Any self-employed individual continuing elective coverage who fails to file an Internal Revenue Service Schedule SE by April 15 of each calendar year is required to remit contributions based upon the last year the self-employed individual filed an Internal Revenue Service Schedule SE.

(d) Any self-employed individual who has not yet filed an Internal Revenue Service Schedule SE shall be assigned an annual income level of four thousand six hundred dollars ($4,600) for contribution and benefit purposes.

(e) Worker contributions required under this division are payable on and after the date stated in the approval of the director. The director may levy assessments under this division for any amount due when an elective coverage agreement has been in effect for less than two complete calendar years. Chapter 7 (commencing with Section 1701), relating to the collection of amounts due, shall apply to this section.

(f) No benefits shall be paid to any individual based on elective coverage income credits in his or her base period if his or her elective coverage agreement has been terminated under paragraph (6) of

subdivision (a) of Section 704.1.

(g) No benefits shall be paid to any individual based upon remuneration deemed to have been received pursuant to this section unless all contributions due with respect to all remuneration deemed to have been received by that individual pursuant to this section have been paid to the department.

(h) Notwithstanding subdivision (b) of Section 2627 and Sections 2627.3, 2627.5, and 2627.7, no benefits shall be paid to any individual covered under this section, with respect to periods of disability commencing on or after January 1, 1994, until he or she has been unemployed and disabled for a waiting period of seven consecutive days during each disability benefit period.

(i) Notwithstanding Section 2653, with respect to periods of disability commencing on or after January 1, 1994, the maximum amount of benefits payable to an individual covered under this section during any one disability benefit period shall be 39 times his or her weekly benefit amount, but in no case shall the total amount of benefits payable be more than the total wages credited to the individual during his or her disability base period. If the benefit is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

SEC. 7. Section 984 of the Unemployment Insurance Code is amended to read:

984. (a) Each worker shall pay worker contributions at the rate determined by the director pursuant to this section with respect to wages, as defined by Sections 926, 927, and 985. On or before October 31 of each calendar year, the director shall prepare a statement, which shall be a public record, declaring the rate of worker contributions for the calendar year and shall notify promptly all employers of employees covered for disability insurance of the rate.

(b) Except as provided in subdivision (c), the rate of worker contributions for calendar year 1987 and for each subsequent calendar year shall be 1.45 times the amount disbursed from the Disability Fund during the 12-month period ending September 30 and immediately preceding the calendar year for which the rate is to be effective, less the amount in the Disability Fund on that September 30, with the resulting figure divided by total wages paid pursuant to Sections 926, 927, and 985 during the same 12-month period, and then rounded to the nearest one-tenth of 1 percent.

(c) The rate of worker contributions shall not exceed 1.2 percent or be less than 0.1 percent, except for calendar years 1992, 1993, and 1994. For calendar year 1992, the rate of worker contributions shall be set at 1.25 percent if on September 30, 1991, the ratio of the fund balance to total disbursements for the prior four consecutive calendar quarters falls below 45 percent. For calendar years 1993 and 1994, the rate of worker contributions shall not exceed 1.25 percent, unless on September 30 of the prior year, the ratio of the fund balance to total disbursements for the prior four consecutive calendar quarters falls below 30 percent, in which case the rate of

worker contributions shall not exceed 1.3 percent. For calendar years 1993 and 1994, the rate of worker contributions shall be rounded to the nearest one-hundredth of 1 percent. The rate of worker contributions shall not decrease from the rate in the previous year by more than two-tenths of 1 percent.

SEC. 7.5. Section 984.5 is added to the Unemployment Insurance Code, to read:

984.5. (a) Effective January 1, 1994, the director shall prepare a statement on or before November 30 of each calendar year, which shall be a public record, declaring the rate of contributions of the succeeding calendar year for all employers and self-employed individuals covered under Section 708 or 708.5 and shall notify promptly the employers and self-employed individuals of the rate. For calendar years 1994 to 1996, inclusive, worker contributions required under Section 708 or 708.5 shall be at a rate determined by the director to reimburse the Disability Fund for the sum of estimated administrative costs due to those sections and unemployment compensation disability benefits estimated to be paid to all employers and self-employed individuals covered by those sections. The rate shall be determined by dividing the sum of the benefits expected to be paid in the following calendar year and the administrative costs expected to be incurred under Section 708 or 708.5 during that calendar year by earnings estimated to be reported under those sections for that same calendar year. The resulting rate shall be rounded to the next higher one-hundredth percentage point. This rate may also be reduced or increased by a factor estimated to maintain as nearly as practicable a cumulative zero balance in funds contributed pursuant to Section 708 or 708.5.

For calendar year 1997, and each calendar year thereafter, the rate established each November 30 shall be determined by multiplying the current year's rate by the ratio of 1.10 times the current year disbursements divided by contributions for the same period, under Sections 708 and 708.5. If in any calendar year the cumulative balance of contributions minus disbursements equals or exceeds 20 percent of annual disbursements, the contribution rate for the succeeding year shall be adjusted to a level necessary to maintain revenues at no more than 20 percent over annual disbursements. If legislation is enacted necessitating adjustments in the benefit levels for employers and self-employed individuals covered under Section 708 or 708.5, the rate may be adjusted by a factor estimated to provide that funds contributed pursuant to Section 708 or 708.5 cover disbursements pursuant to these sections.

For the purpose of this subdivision, disbursements are defined as the sum of unemployment compensation disability benefits paid to employers and self-employed individuals covered under Section 708 or 708.5, plus administrative costs related to those sections. Estimates made pursuant to this subdivision shall be available for public inspection.

(b) The director's action in determining a rate under this section

shall not constitute an authorized regulation.

SEC. 8. Section 1088 of the Unemployment Insurance Code is amended to read:

1088. (a) Each employer shall file with the director within the time required for payment of employer contributions, a return and a report of wages paid to his or her workers in the form and containing any information as the director prescribes.

(b) Each employer shall file with the director within the time required by subdivision (b) or (d) of Section 1110 for payment of worker contributions, a return containing the employer's business name, address, and account number, the total amount of worker contributions due, and any other information as the director shall prescribe. The director shall prescribe the form for the return.

(c) In addition to the return and report of wages required by employers under subdivision (a), an individual who has elected coverage under subdivision (a) of Section 708 is also required to file a return to report wages subject to Part 2 (commencing with Section 2601).

(d) Any employer making an election under subdivision (d) of Section 1110 shall submit the report of wages described in subdivision (a), within the time required for submitting employer contributions under subdivision (a) of Section 1110.

SEC. 8.5. Section 1088.5 of the Unemployment Insurance Code is amended to read:

1088.5. (a) In addition to information reported in accordance with Section 1088, each employer shall file, with the department, the information provided for in subdivision (b) on new employees.

(b) Each employer shall report all of the following information to the department:

(1) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings.

(2) The rehiring or return to work of any person who has been laid off, furloughed, separated, granted a leave without pay, or terminated from employment, and to whom the employer anticipates paying wages.

(c) Employers shall not be required to report on any of the following persons:

(1) Any person whom the employer pays wages of less than three hundred dollars ($300) each month.

(2) Any person who is under 18 years of age.

(d) (1) The department and the State Department of Social Services, jointly, shall adopt rules and regulations to establish exemptions in addition to those provided in subdivision (c), if the department and the State Department of Social Services determine the exemptions are needed to reduce unnecessary or burdensome reporting or are needed to facilitate cost-effective operation of this section.

(2) The department and the State Department of Social Services shall adopt regulations required pursuant to paragraph (1) by April

1, 1993.

(e) (1) Employers shall submit a report within 30 days of the hiring, rehiring, or return to work of any person on whom the employer is required to report pursuant to this section.

(2) The report shall contain all of the following:

(A) The first initial and last name and social security number of the person.

(B) The employer's name, address, and state employer identification number.

(3) The report required by Section 1088 shall not be accepted in lieu of the report required by this section.

(f) Employers may report pursuant to this section, by submitting a copy of the employee's W-4 form, a form provided by the department, or any other hiring document, by mail or telefaxing or by any other means that is authorized by the department and that will result in timely reporting.

(g) The department shall retain information collected pursuant to this section for no more than 180 days after the end of the calendar quarter, except for purposes of enforcement of subdivision (i).

(h) The department may use the information collected pursuant to this section only for the following purposes:

(1) The administration and enforcement of this section.

(2) The identification, prevention, and collection of benefit overpayments pursuant to any of the following provisions:

(A) Article 4 (commencing with Section 1375) of Chapter 5.

(B) Article 5 (commencing with Section 2735) of Chapter 2 of Part 2.

(C) Section 3751.

(D) Section 4751.

(3) The location of noncustodial parents or the income of noncustodial parents.

(4) The identification of errors in employer reports of wages filed pursuant to Section 1088.

(i) The department shall provide a written notice to any employer for the employer's first failure to report any new hire, rehire, or return to work of an employee. For each subsequent failure to report as required by this section that occurs after the date the employer receives notice from the department of his or her first failure to report, an employer shall be subject to a penalty of two hundred fifty dollars ($250).

(j) The department shall not enforce the employer reporting requirements of this section until April 1, 1993, or when regulations are adopted pursuant to subdivision (d), whichever is sooner.

(k) For purposes of this section, "wages" means the same as defined in Section 926 of the Unemployment Insurance Code.

SEC. 8.7. Section 1110 of the Unemployment Insurance Code is amended to read:

1110. (a) Employer contributions required under Sections 976 and 976.6, the amount of benefits received by any individual

pursuant to this part that is deducted from an award or settlement made by the employer under the provisions of Section 1382, and, except as provided by subdivision (b) of this section, worker contributions required under Section 984 are due and payable on the first day of the calendar month following the close of each calendar quarter and shall become delinquent if not paid on or before the last day of that month.

(b) Workers' contributions required under Section 984 are due and payable at the same time and by the same method as amounts required to be withheld under Section 13020 are paid to the department pursuant to Section 13021, regardless of the amount of accumulated unpaid liability for workers' contributions.

(c) Employer contributions submitted pursuant to Section 976.5 shall be paid on or before the last working day of March of the calendar year to which the reduced contribution rate would be applicable. Any employer whose eligibility for an unemployment insurance contribution rate determination is redetermined to make that employer eligible to submit voluntary unemployment insurance contributions in accordance with Section 976.5, may submit a voluntary unemployment insurance contribution within 30 days of the date of notification of the redetermination.

(d) Any employer described in Sections 682 and 684, except as provided in subdivision (e), may elect to report and pay employer contributions required under Sections 976 and 976.6, and worker contributions required under Section 984, annually. All contributions are due and payable on the first day of January following the close of the prior calendar year and shall become delinquent if not paid on or before the last day of that month.

(e) Any employer described in Sections 682 and 684 who pays more than twenty thousand dollars ($20,000) in wages annually, shall not be entitled to the election allowed in subdivision (d). If at any time during the year the total wages paid by an employer exceed twenty thousand dollars ($20,000), the election under this section shall be terminated and the employer shall be required to file quarterly returns for the remainder of the year.

SEC. 9. Section 2627 of the Unemployment Insurance Code is amended to read:

2627. A disabled individual is eligible to receive disability benefits equal to one-seventh of his or her weekly benefit amount for each full day during which he or she is unemployed due to a disability only if the director finds that:

(a) He or she has made a claim for disability benefits as required by authorized regulations.

(b) Except as provided in Sections 708, 708.5, 2627.3, 2627.5, and 2627.7, he or she has been unemployed and disabled for a waiting period of seven consecutive days during each disability benefit period with respect to which waiting period no disability benefits are payable.

(c) Except as provided in Sections 2626.1, 2626.2, and 2709, he or